

A N
E S S A Y
ON THE
TRUE PRINCIPLES
OF
EXECUTIVE POWER
IN
GREAT STATES.

TRANSLATED FROM THE ~~FRANCE~~ OF
M. N E C K

And if each system in gradation roll,
Alike essential to the amazing whole;
The least confusion but in one, not all
That system only, but the whole must fall.

POPE's *Moral*

V O L. I

L O N D O

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INTRODUCTION.

THE time is not far distant, when the inhabitants of every country were interested in the projects and hopes of the French nation ; the time is not far distant, when it was imagined that the first kingdom of Europe would add new lustre to its exalted destiny, and furnish the example of a happy regeneration in political principles. It was impossible to observe without emotion the first dawn of freedom amidst a people possessing so many claims to celebrity ; and the eyes of mankind were fixed with admiration upon the memorable epocha, when a monarch, heir to a power, the limits of which were unknown, formed himself the generous resolution of circumscribing them ; and when, disdaining the ambition of an unbounded authority, he surrendered himself to the emotions of a virtuous mind, and aimed at securing to his subjects the vast benefits which he had in contemplation.

Every soul of generous feeling, foreigner or native, was intellectually present on that great and important day, when the august benefactor of France, surrounded by the deputies he had called together, deliberated with them upon the means of establishing for ever the public felicity. If we cast our eyes at this period over the different countries of Europe, we shall say, that the first representatives of the French nation had to acquit the debt of gratitude which was felt to the king by the whole human species ; we shall say, that these representatives held in their hands the cause of the universe ; so much did all hearts associate themselves in their important mission. It was a source of general satisfaction to see the great mass of citizens, whom oppressive institutions had vexed in so many ways, rise from their abasement and obscurity ; and, however ungrateful these citizens may have been, the splendid act of the monarch, which gave substance to their rights and their dignity, will hold its rank in the memory of mankind ; so truly does a genuine moral energy, existing of itself and independent of events, survive enmity and triumph over misrepresentation. I
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well remember how Europe observed with interest and sympathy the first efforts of our deputies, and the obstacles counteracting their progress which prevented them from entering immediately upon their great career. Even after the epocha of the revolution, which the national assembly had consecrated in its annals, foreigners did not yet permit themselves to despair of our cause. The singular coincidences of the times, the majesty in which distance envelopes great events, and which hides the frivolity and meanness of their causes, still supported our character abroad ; and not even those deplorable excesses with which the first moments of the insurrection of Paris were stained, could destroy the general partiality for a great people, marching forward to a great object, with the wild disorder of great passions. It was believed, that generosity would follow in the train of victory ; it was hoped that discretion would accompany and modify the triumphs of force. With how much patience and forbearance did the inhabitants of other countries excuse the errors of the French and the faults of our first legislators ! They still trusted, that, in the last mo-

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ment of revision, in the result of the final dispositions of the constituent assembly, order would give her hand to the support of liberty. Mistrust had long taken possession of the sober and thinking inhabitants of France, before foreigners would allow themselves to harbour it. The great mass of mankind is pertinacious in its sentiments, is an immense body that moves all together, and that cannot be guided or regulated by complex ideas. It was not therefore till after long resistance that foreigners abandoned us; it was by a sort of constraint that they withdrew from us their attachment; and they felt a deep and lively sorrow when they saw their wishes frustrated and their hopes vanish. Their interest diminished and their hearts were alienated, when they beheld the progressive increase of disorders; when they beheld the continual abasement of all regular authority, and the sacred maxims of liberty converted into a pretext for every species of tyranny. Their interest diminished and their hearts were alienated, when they saw the people blinded by the hypocritical adulation of those who aspired to govern in their name; when they saw in
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the legislative body, the timid imbecility of virtue and the daring insolence of vice; when they saw the base complaisance of a national assembly towards men whose characters were so far tarnished, that they would not have been permitted, according to the laws of the ancient republics, to offer a proposition however useful to the public adoption. But above all did foreigners shrink from us with terror, when they heard the story of successive deeds of injustice, barbarity, cruelty; and when, as it too often happened, no man but themselves lent an ear to the distressful cries of the victims. The generous and the virtuous of every country abandoned also the cause of the French nation, when they witnessed its ingratitude towards a monarch, whom that very nation had described in its *Faeti* by the glorious appellation of *the Restorer of Freedom*; when they saw the shameful pleasure that was taken in idly wounding the heart of the best of princes, and that he was subjected, in the hour of adversity and in his retirement, to the vile and dastardly insults of the most contemptible of beings, who, a little before, and while the

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shadow of power remained, had servilely cringed and licked the dust beneath his feet. In fine, all nations despaired of us, when they saw morality and religion rendered the laughing stock of our politicians, when they observed the presumptuous hopes of that criminal philosophy, which, having thrown aside the mask, pretended to substitute its frigid lessons for the balm of piety and the inspired communications which heaven had adapted to our weakness. At length, alas ! the prosperity of France is no longer so much as hoped for, and they are her best friends that abandon themselves to the most melancholy presages. They perceive the arrival of the last term of illusion ; they see the moment approach when the bitterest tears will be shed over the rich harvest which has been suffered to perish, when the least prudential effort might have saved it. You who have accomplished all this, with what remorse ought you not to be stung ! It is not your country only, it is all Europe that demands an account of that liberty of which fortune had rendered you the guardians ; of that liberty, which, sagaciously directed, would have captivated the affections

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affections of the whole universe, but which, in your unskilful hands, is become an instrument of fear and a signal of terror. Blind and wretched guides of a nation deserving of a better lot, you have sacrificed even her renown ! Could you for a moment but quit the narrow cell in which your vanity has inclosed you ; could you but hear what is now said of a people whom you have misled, your remorse would be eternal. It is said, that their imitative spirit, supportable in the business of fashion, is converted in political affairs into incredible hyberbole, and renders them incapable upon all occasions of moderation and prudence. It is said, that their suavity of manners was the effect of their submission, and that their true character at length displays itself. It is farther said, that they have absolute need of a master, and that liberty is a happiness of which they are neither worthy nor capable of enjoying. Such is the language which is now held throughout Europe ; nor is it at all to be wondered at. Meanwhile it would be unjust to impute to the natural inclinations of the French people, wrongs that belong to a political constitution, in which art seems to have been exhausted in order to

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introduce anarchy and the relaxation of every social tie. Among the different motives then, which may induce us to expose the vices of this constitution, it may be one to remove the obloquy which rests upon a great nation, by shewing the true cause of the various disorders by which France is devoured. In this subject I have a particular interest, who have united my name in so many different ways to the name of this distinguished country; and if, while I fulfil a task which I have so much at heart, I annex no other title to my work than reflections on *Executive Power*, it is because all the different branches of politics are in my opinion closely connected with the prudent constitution of this power. Every thing would have gone on well among us, if we had taken care to place ourselves under the protection of a benignant guardian; time would have done the rest, time would have brought the seeds that we planted to maturity and perfection.

I have never ceased to remind the national assembly of these fundamental truths. During my administration I neglected no opportunity of enforcing them; and it was with the same view that, in my retirement, I hastened
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the publication of my last work, previous to their entering upon the revival of the constitution. It will however be seen that our legislators, sometimes through ignorance, and at others through weakness, have constantly diverted their attention from the idea which ought to have been ever present to their minds; it will be seen how they have neglected real precautions from a blind attachment to certain maxims; how they have preferred the office of high priests of a new sect, to the honourable functions of philosophical lawgivers; how vanity led them early astray from duty, and how they have more anxiously sought the applauses of the people, than the inestimable satisfaction of one day meriting its benedictions. It is by rendering justice to these men, by exhibiting them in a true point of view, and assigning them their proper place, that I shall save the honour of the nation; for there is not a people upon the face of the earth whose manners would not be totally changed, if they were suddenly carried back to the state of natural liberty, or if they were merely brought near to it by unnerving the authorities destined to guaranty the public order. Envy, jealousy, nay the mere aversion excited by the unequal

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distribution of property, sentiments that are at present contained within bounds by the power of the laws, would then present the most terrible spectacle, since liberty would become the ally of all the passions that instigate us to the abuse of liberty. The barriers that divide the savage from the civilized state, are much stronger in appearance than they are in reality; they were erected many ages ago, and their very antiquity offers itself to our imagination as an index of their indestructibility: meanwhile, in sober reality, a few simple moral principles constitute these barriers, and one or two of these principles, pushed to an extremity, would suffice to unite the spirit of independence and the spirit of tyranny, the equality of the early with the corruption of the later ages of history. A slight inattention to the executive power, in the structure of a political constitution, may bring on this catastrophe, and present us with the architype of that cloud, no bigger than a man's hand, which, appearing in the midst of a blue and brilliant atmosphere, terrifies the experienced navigator, and which, at first almost an imperceptible point, blackens by degrees the prospect, and prognosticates the bursting of a terrible storm.

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I know not whether this work will be the means of conveying useful instruction to the French nation ; till it shall begin to shake off those slavish chains in which it is held by our polemical writers, it will not I fear be disposed to listen to the truth. But foreign nations, who have not yet parted with that best and most honourable species of independence, freedom of opinion, will perhaps hear me, and it is to them that I pay the tribute of my thoughts with greatest confidence. As they value their own happiness let them repel the exaggerations to which we owe our ruin ; and let us one day derive wisdom from their conduct. We have been desirous of instructing them, but it has been with the trumpet of discord and from the towers of Babel ; and the opposition of our hearts and the confusion of our tongues have equally discredited our lessons. Our morality and our virtues would have been the best proof of the soundness of our philosophy, as our happiness would have made more converts than the most rhetorical language. I recollect the time, when, in publishing the result of my long reflections on the finances of France, I employed these words : “ Yes, generous nation, it is to you I

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“dedicate this work.” Who, alas! would have supposed, that, in the revolution of so small a number of years, the period would arrive when I could no longer make use of the same expressions, and when I should be obliged to direct my attention to other nations, in order to derive fresh courage to speak of justice and morality! Ah! why is it not now permitted me to say: “To you I address this work; to you, a nation more generous than at any former period, since liberty has developed your character, and freed it from its shackles; since your neck is no longer worn with the yoke of slavery; since you have made a fair trial of your strength, and obey no laws of which you were not first the authors!” Ah! what transport would it have given me to be able to adopt a language like this! The feeling still exists in my bosom, but it is now an exile and a vagabond upon the face of the earth: I am incapable of forming any new political alliance, and I am not less incapable of indulging, even in fancy, the favourite idea and the single passion with which my soul was so long impregnated.

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A N
E S S A Y
ON THE
TRUE PRINCIPLES
OF
EXECUTIVE POWER, &c.

CHAPTER I.

General Reflections on Executive Power.

THE executive power is the moving force of a government. It represents, in the political system, that mysterious principle which, in moral man, unites action to the will. In the mean time so various are its relations, so extensive is its influence, and so great the pace, thus to express myself, which it occupies in the social order, that the adjustment of its limits, and the accurate adaptation of its means to its end, offer to the human mind one of the most comprehensive subjects of reflection.

The eminence of the legislative power, and the rank it holds in the scale of authorities, strike the imagination in a more forcible manner: yet in the first conception of this power all is simple, and its existence depends on no exterior circumstance. The functions which appertain to it may be executed by an assembly of men possessing the confidence of their fellow citizens, though this assembly should not have been constituted agreeably to the best principles, and in the most perfect manner. The formation therefore of the legislative body cannot be placed in the number of problems difficult of solution; and it certainly requires not, like the institution of the executive power, a precise rule, an exact conformity, from which it would be dangerous to depart.

It is of little importance either to happiness or to liberty, that the legislative body be formed, as at present, of seven hundred and forty-five deputies; rather than of six, seven, eight,

eight, or nine hundred. Scarcely is it of greater importance, that the assembly be composed of deputies nominated by each department, in the combined ratio of number of inhabitants; degree of contribution, and extent of soil; and not in the simple proportion of population and public burthens. The duration of each legislature may also be fixed at three, in preference to two years, without any advantage of moment resulting to the kingdom. And the age and degree of property necessary to be eligible, are equally points in the precise determination of which the safety of the state is by no means essentially interested. Lastly, even the grand question respecting the formation of the legislative body into one or two houses, though the most interesting of all, acquires no real importance till the moment that its connection with the executive power be seen; for if it be considered only as it relates to the framing of laws, it is obvious that a part of the inconveniences

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resulting

resulting from a single house may be remedied, by modifying with constitutional provisions the dangerous rapidity of its deliberations and decrees.

It may without rashness then be affirmed, that the constitution of the executive power forms the essential and perhaps sole difficulty of every system of government.

This power, though second in appearance in the political scale, acts there the principal part; and if by a fiction we were for a moment to personify the legislative and the executive powers, the latter in speaking of the former might borrow the well known words of the Athenian slave, and say: *All that this man has talked of, I will perform.*

The laws would in effect be nothing more than counsels, than so many maxims more or less sage, without this active and vigilant authority, which assures their empire and transmits to the administration the motion of which it stands in need. When it passes
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certain limits, this power is alarming to liberty, and may endanger the constitution itself; and when stripped of the prerogatives that compose its strength, it is incapable of fulfilling its important destination, and its place remains as it were vacant amidst the social edifice.

It is therefore by the efficacy of this power and its prudent adjustment, that the primitive intention of political society is accomplished; and it derives its perfection from the most exact combinations, where all is proportion and every thing in equipoise.

Very different however from the legislative power, which may begin its career the moment it is installed and the persons appointed to exercise it are legally assembled, we may almost say of the executive power, that when created it has not yet existence, as its influence depends on an infinity of means entirely distinct from its institution.

In reality, the constitutional laws would in

vain define the functions of the executive power, would in vain ordain that a general respect should be paid to it, would in vain determine that this power should be exercised, whether by a monarch elective or hereditary, or by a senate composed of a certain number of persons, eligible in a certain way: these conditions would give to this power neither energy nor life; and while the legislative body, with its thinking or its eloquent members, might multiply at its pleasure laws and decrees, the executive power, if not invested in all the prerogatives necessary to its authority and its credit, would uselessly attempt to enforce its rights and accomplish the ends of its institution.

This power has no existence but by the union of all the properties which form its essence; it derives its energy both from the real succours that are given to it, and from the continual assistance of habit and of imagination; it must have its rational authority
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and its magic influence; it must act, like nature, by visible means and by an unknown ascendency.

Nor will the necessity of this union strike with astonishment a reflecting mind. The object itself is so extraordinary, that the means must be expected to be of no common magnitude. For a whole nation to yield obedience to a single law is an arduous expectation, whether that law originate in the will of one man, or in the combined opinions of a representative assembly.

The difficulty of the undertaking must appear considerable, if we only compare it with the opposite mode of operation which belongs to the physical world, where the motion of bodies is universally proportioned to their masses and their attractive power.

The obedience of a very great to a very small number appears then to be a singular circumstance, an idea bordering almost upon mystery; yet we believe to be simple what

has long existed in the moral order, as we observe with all the unconcern of habit, the most surprising phenomena of the universe.

At present however, when we have stopped all the wheels of the old political machine; when we have changed or displaced them; when we see also order every where subverted, obedience every where opposed, it is time we should acknowledge that a motion, the most simple in its effects, frequently depends on an organization, the proportions of which are the most astonishing, and its springs the most complicate.

The executive power has the same end, the same destination in all governments; its functions therefore may be easily defined, and separated from those which exclusively belong to the legislative body; but when we are desirous of organizing this power; when we wish to make choice of the elements proper to constitute its strength; when we wish to assure an agency free from abuse, a motion
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that shall be unaccompanied with destruction and would apply all these proportions to an immense rotation, we perceive the difficulties of such a theory ; and the national assembly might perhaps be pardoned for having slighted or overlooked them, if all our misfortunes, those which we have already experienced, those which we feel at present, and those which we have still to apprehend, were not to be referred to this first fault. This fault we shall long have cause to regret, and in order one day to find its remedy, it is previously necessary to be conscious of it in its full extent and in all its dependencies.

CHAPTER II.

Formation of Executive Power, with Reflections on the Conduct observed respecting it by the National Assembly of France.

WE have just shown that the formation of the executive power is the only difficulty attending a political constitution ; and we have observed at the same time, that the welfare of the state and the most important interests of a nation depend on the wise and prudent solution of this difficulty.

If the national assembly of France therefore, examining with a persevering and serious attention a question of such magnitude, had blundered in their conclusions ; if seeking to establish a perfect equipoise between the security

curity of public order and the maintenance of liberty, the balance, from inadvertency, had declined in their hands, the weakness might have been placed in the number of errors from which the title of legislator does not exempt men. But how can they defend themselves against a heavier charge, a charge which, if founded, would give us reason to call in question their political science, and tarnish the glory after which they most anxiously aspire, that of talents and genius? Yes, it is on the very eminence where they have placed themselves, it is amidst the homage that attends them like their shadow, that I dare call them to account for a fault, the source of all the evils and troubles of France, and of which no example is to be found in the history of political legislations.

This fault, the consequences of which have been so great, is the having absolutely forgotten the executive power, when they ought to have been mindful of it; the having mis-

taken its nature, and imagined that the law was sufficient to create it ; the having presumed that, in order to have a king, it was only necessary to declare his crown hereditary, and his person inviolable and sacred.

We shall throw some degree of light upon these propositions by following for a moment the path of our legislators, and ascending to the origin of their labours. This arrangement of our reflections will be the more proper, 'as' the national assembly itself, either seduced by the attractions of order, or confiding in its character and authority, has moulded its sentiments into a sort of scale, well calculated without doubt to diminish the effort of invention, but which risked a failure in its application to the circumstances that might occur.

The assembly then, giving the 'priority to the examination and recognition of the rights of man, next proceeded to the choice and adoption of the constitutional articles of their

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new political system ; and having assigned the third place in the order of their labours to the task of constructing laws for the regeneration of all the branches of government, postponed to the last the organization of the executive power.

They doubtless supposed this to be its rank. But though it be true that, in the order of action, the executive power comes next after the legislative, whose decrees it ought to execute, it is otherwise in the order of thoughts generating the social system ; it is otherwise when we consider the moment in which the different powers should be constituted, and receive the properties necessary to their existence and duration. Then no supremacy can be admitted ; and since in a political system, the movement proceeds not from without, but is inherent in all the parts, by separating the formation of the executive power from that of the other constitutional combinations, there would be a danger of our
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becoming the authors of an imperfect work, a work lame and sickly from its birth.

The winds and the waves act not upon a vessel till the moment that it is completed, till the anchors are raised, and the sails spread; but if the constructor, in planning the different parts of his curious edifice, had not taken into his estimate the degree of pressure of all the powers that were to impel or to resist it, the vessel would remain in port, and would be unable to make its way in the ocean.

Thus the national assembly, from the moment their attention was occupied by the declaration of rights, from the moment they thought of fixing the constitutive articles of their political system, ought to have made the necessary enquiry, not only as to what were the general conditions on which the solid existence of an executive power depended, but also what were the particular conditions which this institution required in a kingdom like France.

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In that case the assembly would first have seen that the utility of such a power was in proportion to the importance of public order: next they would have seen that the maintenance of this order, the guarantee of property, and the common desire of mankind to enjoy in tranquillity the habitual consciousness of personal safety, were the spirit and object of all political associations; and seeking to secure to us these advantages, seeking at the same time to protect liberty from the dangerous influence of useless authorities, they would early have discovered the true means of reconciling interests apparently opposite; and fixing their opinions, at least respecting the different elements of which the executive power ought to be composed, and the laws of equilibrium absolutely indispensable to the activity of government, they would have had the result of these considerations present to their minds in the course of their labours and studies,

studies, and would from the first step have perceived its application.

Then, and if they had judged that in a kingdom consisting of twenty-six millions of souls, and with an impetuous and fickle nation, it was impossible by elevating beyond measure the imagination of the people to escape the dangers of anarchy, the assembly would have avoided saying to it without any real utility, *men are born and continue equal in rights* ; they would particularly have avoided addressing it in legislative and proverbial maxims, maxims which are easily retained and transmitted ; and they would further have avoided misleading its mind by including among those rights, and under the title of *imprescriptible*, all resistance of oppression, a vague, uncertain, and always dangerous idea, when the application of it is abandoned to the eternal ignorance of the multitude.

In fine, when the national assembly passed from the declaration of rights to the examination

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tion of the constitutional articles, they proceeded blindfold in the discussion, since they had acquired no information relative to the conditions necessary for the establishment of the executive power; and since they were absolutely ignorant both how these conditions would amalgamate with such and such parts of the constitutive code, and how they could be made to assort with the limited degree of authority which the assembly were disposed to accord to the chief of the state. Thus the most simple and most fundamental constitutional articles would have been found to have had a near reference to the previous questions that I have pointed out, and which never entered into the deliberations of the assembly. Let us apply these observations to a few examples.

It is with propriety placed in the first rank among the constitutional articles, *that the French government is monarchical*. I am far from thinking the national assembly to have

possessed either the right or the power of changing a fundamental disposition, consecrated by all the instructions and stamped with the seal of public opinion : but considering the question here in a speculative view, and supposing the assembly invested, as it has pretended to be, with an unlimited licence of pulling down every thing and building anew, would they not have acted prudently, if, previously to declaring the French government *monarchical*, they had enquired what degree of consideration, ascendancy and rule it was necessary to secure to the monarch, to enable him to discharge the functions of the executive power in a kingdom such as France ? For even admitting that this enquiry might have excited in the assembly alarms respecting the extent of means that must be lodged in a single individual, an individual however bound to secure public order, the protection of the state, and the activity of the administration, it would have led to the farther con-

ration whether those alarms, well or ill founded, ought not to engage the assembly to adopt a republican in preference to a monarchical form of government; and thus they would not themselves have been the occasion of a question being at this day agitated by a part of the nation, which should have been placed first in the order of political discussions.

The hereditary succession in like manner, was not unconnected with the institution of the executive power and the degree of force proper to assign to it: for though this succession might seem at first view, a subject of umbrage, and a reason for reducing the authority of the monarch, yet as it is a circumstance that leaves to chance the qualities of the prince and the influence attached to his personal worth, it enforces the necessity of founding the royal authority upon real prerogatives, upon prerogatives adequate to supply the deficiency inevitable from the failure of sentiments of respect, whenever, in the course

of the numberless casualties of nature, time shall bring to the throne a sovereign destitute of the various gifts which are revered by mankind.

I shall bestow a cursory attention upon other constitutional articles. The national assembly in determining, at first tacitly, and afterwards in a formal manner, the indivisibility of the kingdom, could not act in this respect from a perfectly enlightened judgment, before they had thoroughly explored, or at least taken some view of the question of the executive power; for, as the indivisibility of the kingdom implies a proscription of a federative government, the assembly thus bound themselves to invest the monarch with the requisite authority to govern, from the central point, an immense kingdom; and the dangers or the inconveniences of this authority ought to have been taken equally into their deliberation.

It was also not a matter of indifference that the national assembly should have bestowed
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some attention upon the difficulties attending the organization of the executive power, previously to their decreeing constitutionally that the legislative body should consist only of a single house. For had they been aware, that, among the different means that might be selected for organizing such a power, one of the most mild and judicious was the maintenance of that instinctive and habitual respect, independent of all reflections, which the people in all nations of the world pay to the chief magistrate, they would without doubt have enquired how this respect could be kept alive without destruction of rank; and this enquiry would certainly have in some degree modified their deliberations respecting the resolution of the legislative body into a single assembly.

Farther, when the national assembly decreed constitutionally the permanence of the legislatures, without imposing an obligation as to any discontinuance of their sittings, they could not be sure of the propriety of the mea-

sure, since they had neglected to examine at the same time whether the proper means existed of counterbalancing the diminution of reverence that would inevitably result as to the monarch, placed continually in the presence of a numerous and powerful body, towards whom all the hopes, all the fears and all the regards of the nation would be incessantly directed.

It would be easy for me to show in what manner the grand question of the executive power bore a direct relation to the rest of the constitutional articles decreed in the month of September 1789, but it would be superfluous to extend farther these reflections.

The conduct of the national assembly, at the period of their decreeing the fundamental articles of the constitution, is calculated to excite a still greater astonishment. It was natural to presume, that, after having absolutely forgotten the formation of the executive power in the discussions which preceded the adoption

adoption of those various articles, they would at least have given it a general attention, before they entered on the work of legislation : but so far from doing this, so far from seeking to fix their ideas respecting the prerogatives necessary to the supreme chief of the government, they pursued a plan directly calculated to divert their attention from the subject. The assembly divided the examination and digestion of all the laws of the administration among their various committees, each of which, in its department, fashioned the part of the monarch as it pleased. This the committees did, frequently without at all considering whether they acted in union with the committee of constitution, and without enquiring whether there were any general plan for the formation of the executive power, and how each part of the administration was to concur with it. The various committees also, previously to their making their report to the assembly,

enquired not whether the members of the committee of constitution were to assist at the sitting, and the assembly equally neglected to take the opinion of this their principal committee on the reforms which the other committees proposed, agreeably to their particular fancies, but from uniform feelings as to the reduction of the ancient prerogatives of the monarch: the consequence was, that the executive power found itself composed of those prerogatives only which had escaped the wreck of the various committees of the assembly, all deliberating and acting separately, and without any kind of concert.

Thus the ecclesiastical committee, influenced by the opinion that the people were competent to the choice of bishops and inferior clergy, reserved to the king no share in these elections, not even the right of assent or approbation. The committee of judicature adopted the same idea respecting the nomination of judges civil and criminal, and formed
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its plans agreeably to this principle. The committee of contributions conceived that business of the exchequer would be better discharged if an invariable rule of promotion were fixed as to its agents, and excluded as useless every degree of influence and appointment on the part of the monarch. The military committee also, in establishing rules respecting the advancement of army officers, laid upon the sovereign the severest restraint, dealing out to him a scanty concern in the affair of nominations, and even that, not with a view of giving to the executive power its necessary consideration, but in order that there might exist for distinguished talents a hope independent of the law of seniority. The marine committee followed nearly the same principles; and as to the National Gendarmerie, which it was thought unnecessary to make an exception, the royal prerogative was still farther restricted. The pension committee, persuaded that every sort of favour .
would

would be more regularly distributed by the assembly than by government, carried this principle so far as to deny the king the privilege of bestowing a gratuity of a hundred franks without the consent of the legislative body. Lastly, the committee of constitution itself, when occupied with the particular organization of the departments, districts, and municipalities, forgot, like the rest, the necessity of securing to the executive power some means of consideration and influence, and reserved to it no share in the nomination of persons whose province it is to exercise in the interior of the kingdom the functions of police and administration, to direct, proportion, and recover contributions, and to watch over every part of public order. The organization of the national guards was regulated in a similar manner, and I could extend these examples still farther; but I have cited enough to show that each committee, thinking only of the object of the administration

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tion which it was to plan, neglected entirely the part necessary to be assigned to the executive power, in order to invest it with the consideration indispensable to its existence. The committees had received from the assembly no instruction to do this, so that the blame of their conduct falls not upon them. Besides how were they of themselves to ascertain the degree of royal influence that ought to be preserved? Each of them pursued its labours separately, without affording a thought to the consideration in what degree it became them to concur in the construction of an executive power. They treated this power as if it had been a supernatural and pre-existent faculty against which each of them indifferently was called to direct its attacks; while in reality the executive power, amidst the general annihilation of the old government, could only derive its activity and existence from the sources of influence and ascendancy which should be designedly reserved to it ;
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and these sources would be proportioned to the mode in which the royal authority should be displayed in each department of the public administration.

It was neither to the different committees of the national assembly, nor to any of its deputies in particular, that the appreciation of the means proper for instituting the executive power ought to be confided; so important a discussion belonged to the assembly itself; and it ought not only to have preceded the work of legislation, but it merited also to have been considered jointly with the determination of the principal articles of the constitution.

The assembly having destroyed all the obligations, all the principles, all the usages, all the habits, and all the kinds of respect that, under the preceding government, had given lustre and support to the executive power, it was no longer sufficient to declare that this power should reside in the hands of
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the monarch : it was necessary, after mature deliberation, and with every possible assistance of human intellect, to form a picture of the prerogatives requisite to enable the king to exercise the august function confided to him ; it was necessary, in the presence, as I may say, of public order and of liberty, carefully to investigate the point of conciliation between two interests equally dear, and to obtain by dint of reflection that precise measure, that just proportion, which might escape the vague enquires of systematic minds, and the discernment of which is reserved for the calm researches of reason and the penetration of genius.

This national and judicious organization of a power destined to maintain public order and the observance of the laws, an organization important both on account of its object and its necessity, might have raised our thoughts to the moment when the sovereign author of nature, after having created man, determined
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in the depth of his wisdom, what degree of force and activity he should add to the most valuable of his gifts, the gift of liberty.

When the national assembly had once fixed their opinion respecting the requisite means to secure to the executive power its proper ascendancy and consideration, the committees, instead of supposing that the sole will of the law gave to this power its full completion, instead of supposing that it was already too great, when as yet it had no existence, would each, in the course of its labours, have endeavoured so to construct the department of the general administration that came within its province, that it might harmonize with the principles established by the assembly: and thus the executive power would have been modelled, not at hazard and from no system, but agreeably to a well arranged plan, the result of the first deliberations of the legislator.

It appears then, that whatever difference
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of opinion we may suppose to exist respecting the inefficiency of the executive power, as it has been constructed by the accidental concurrence of sentiments in the different committees; or by the ultimate decision of the legislature, it is not less incontrovertible that the national assembly departed from the line which the nature of their office ought to have imposed as a law upon them; that they entered upon the business of legislation without forming any previous plan respecting the necessary prerogatives of the executive power; and that thus, deprived of the capacity of judging, they listened in vain to the reports of their committees, incapable of deriving any light as to the propriety or impropriety of banishing, as they have done, as much as possible, the influence of the monarch from the nomination to all appointments in the church, the army, the navy, the police, the magistracy, the finances, and the administration.

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The national assembly and its committees have thus seen themselves constrained to adopt a maxim of Montesquieu for their guide, and which is treated at large by Rousseau in his Social Contract, which is, *that the people ought to do of itself whatever it is competent to do well, and what it cannot do well it should leave to be performed by its ministers.* But these philosophers are speaking expressly of democracies ; and even in such governments a principle of this nature cannot be admitted without some modification. Nor is a democracy able to dispense with an executive power ; and in order to form this power such prerogatives must be given to it as shall secure the necessary degree of consideration to cause it to be respected. As democracies however exist only, and can only exist, in small states, public opinion is there so considerable an aid to the executive power, that this power can accomplish its object and maintain public order with very feeble means.

But

But to apply the maxim of Montesquieu to a kingdom like France, is one of the greatest faults that a legislator can commit.

If indeed, in a political constitution, the executive power were invented for the convenience and amusement of the person who was to exercise it, it would be right to bestow on it such prerogatives only as the people should think proper to reject; for every degree of preference would belong to the nation, either because of its sovereignty, or on account of the immensity represented by its collective existence. But a distribution directly the reverse would become fitting, if the executive power were considered as the corner stone of political society, if it were regarded, in the light it ought to be regarded, as the protector, the guarantee of public order, and the power that gives motion to the general administration. Then it would be incumbent, for the sake of the welfare of the state and the interest of the nation, first to examine and ascertain

what prerogatives were requisite to render this power effectual; and after having fixed them, with all the precaution that a love of liberty inspires, the overplus that remained, if I may be permitted so to express myself, would fall to the people to be exercised in elections and other associations indirectly connected with the administration. It is against an useless authority that the people should feel resentment, never against that which is instituted for their own advantage. This is what they would have been told and what they would have felt, had there not been a greater eagerness to please than to serve the people, and had there not been a desire to make the spoils of the executive power, the instrument by which to seduce them.

In the mean time individual interests, personal views, the secret and dark career of intrigue, the daring attempts of undisguised ambition, the mad passion for new systems, and the knight errantry of metaphysics, would
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have had, over the mass of virtuous and upright minds, but a feeble influence, if the national assembly, by a preliminary discussion, had taken measures to ascertain and determine, before they entered on the work of legislation, what degree of force it was necessary to accord to the executive power to constitute its essence. They would then have had an instruction that would have served them as a guide and a model to which they might constantly have referred; and they would certainly never have consented that this power should be composed of the scattered remnants of prerogative, the entire work of chance. Then also the directors of this assembly, those haughty and imperious guides, would not have had the temerity to suppose that the executive power could be created by their sole fiat, by a single word from their lips; but in a moment of diffidence would perhaps have thought that it was not the province of mortals to say to the paralytic, *surgere et ambulare*, rise up and walk.

CHAPTER III.

In what manner the Question of Executive Power ought to have been treated by the National Assembly.

IN great affairs, and in the various exercises of thought, the questions most difficult of determination are those in which the mind has to fix limits, and to draw with accuracy a line of demarcation between contending principles. There are political problems of the highest importance in which this difficulty does not exist. Thus, the distribution of powers, their line of separation, the formation of the legislative body, together with many other political dispositions, doubtless require just views and considerable comprehension; but for the solution of questions to which I allude
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another and higher species of intellect is requisite, and among these questions there is not one that occupies so immense a space, that presents so many uncertainties to be cleared, as the prudent and deliberate choice of the means necessary to give to the executive power the activity of which it stands in need, without violating political liberty or subjecting it to peril. The task is arduous, and neither the force of reasoning, which from proposition to proposition leads at last to truth, nor that metaphysical spirit whose rapid flight frequently attains it sooner, are adequate to its accomplishment. In this business the mind is called to a fugitive point, to an object which presents itself under infinite anomalies of appearance. It has uncertain forces to calculate, apparent oppositions to reconcile, vague limits to fix, and the general system of proportion that it must observe depends upon numberless combinations and dependencies. It requires therefore the union of various species of talents

properly to organize the executive power in a great empire ; particularly when the old foundations have been demolished, and when the soil on which they stood, dug up in every direction, affords not the slightest trace of the edifice.

Every thing thus seemed to point out to the national assembly the necessity of searching for a model, not in order servilely to conform to it, but to assist them in fixing their ideas amid the immense void which their destructive genius had spread around them. This model was near at hand, a circumstance that was our misfortune : for had it not existed on the banks of the Thames, but been transmitted down to us in old traditions, extracted from a Chinese or Arabic manuscript, and found by chance in some library, or mysteriously confided to the chiefs of our legislators, their ambition to pass for inventors would perhaps have led them to doubt, whether deriving their ideas from the extremity of the globe,

globe, or from remote antiquity, was not tantamount to being the authors of them; and we should have enjoyed the English government in an improved state, a government more free than that which we have at present, and assuredly more happy. We should have had at least an executive power capable of preserving public order, without exciting fears for the maintenance of the constitution; and as the opinion of the nation might have been directed with greater facility towards prudent ideas which had stood the test of experience, than towards wild and unprecedented systems, the most perfect satisfaction would have prevailed for the present, with the additional certainty of its continuance, and general tranquillity would have been its first presage. Ah! on what trivial causes do great events depend! This common maxim could never be applied with greater truth and force than to the political situation in which we have

been placed, and in which we still find ourselves.

But I recal the attention to the executive power, to that branch of the constitution which is inseparable from every other. It is thus, that in my opinion, the example of England might have served to direct the meditations of the legislators of France—They had to combine and organize a power, the guardian of public order, the principle of the entire activity of government; and since, in so serious a business, prudence would not permit them to be guided solely by conjecture and surmises, they ought to have sought in the most temperate monarchy of Europe for a knowledge of the elements that enter into the formation of that power; and perceiving at the same time that the English administration with all its prerogatives has barely authority sufficient for the maintenance of order and the prevention of anarchy, they would naturally

rally have been led to fashion their ideas in conformity to these salutary observations.

Forewarned in reality, by the experience of a century in a neighbouring people, what sort of combination of means and prerogatives was requisite to give efficacy to the executive power, had any particular parts in this combination not met with their approbation, or struck them as attended with inconvenience, they might have modified these in another manner; but sure of an object of comparison, and having it always present to their thoughts, even in deviating from it they might not have wandered into error.

Such, as it appears to me, was the most simple mode of proceeding, and what would certainly have been recommended to the legislators of France, not by vanity, not by an ambition to pass for inventors, not by presumptuous confidence, but by that plain good sense, before which I am every day disposed to bend the knee with greater respect, in consequence

sequence of seeing how dearly in all transactions we pay for the contempt in which it is held. Alas! there are who conceive it base and low; there are who soar in all the sublimity of metaphysic pride, who if, while they led the assembly along with them in their ærial circle, had ascended a little higher, would perhaps have arrived at the region of this despised principle.

In treating so important a question, it was surely right to seek for information by examining what were the elements of which the executive power of England was composed; it was reasonable to consider whether the degree of prerogative with which that power was invested proved in any respect injurious to public liberty; and supposing for a moment we had been led to this belief, it was our business to have sought how to guard against the danger; but on no account ought the security of public order and interior tranquillity to have been abandoned, blessings so dear so inestimable,

mable, and the enjoyment of which is the chief object of man's desire when he renounces individual independence to unite himself to society.

In studying the history of England from the revolution of 1688, it would have been seen that the national constitution, respectfully maintained, had experienced no important change, and that political liberty, under the different guardian powers, had continued unalterable : essential truths, and which I mean more minutely to investigate.

What information, what succour, would not experience have afforded us had we been disposed to consult her ! It is she that furnishes us with the extract and sublimates of the knowledge of all ages and of all nations, and who incessantly manufacturing with her wheel ideas, the most subtle and imperceptible in their origin, gives them the consistency adapted to our use ; but unfortunately they then assume the name of common maxims, and we begin

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to despise them. But the moment approaches, when, after having imprudently discarded the tie that unites them, we shall find in their composition every degree of intellect and of thought.

I propose, in the following chapters, to draw a parallel between the organization of the executive power in England, and the elements of which this power is constituted with us. This comparison will serve not only to show the extreme weakness of the authority which, in France, is to watch over the maintenance of public order; but will also naturally lead me to justify what I have advanced, in the beginning of this work, respecting the intimate union that exists between the formation of the executive power, considered in all its relations, and the various constitutional laws of a nation. It is, I conceive, by applying general ideas to real objects that they become additionally instructive, or at least are the more easily understood.

CHAPTER IV.

Formation of the Legislative Power.

IT is impossible at the present moment to turn our eyes to the political state of France and of England, without being struck with an incontrovertible truth ; that in one of these countries, enjoying the most perfect civil and political liberty, there exists the happy art of preserving the social harmony, of maintaining public order, and of securing the activity of government ; and that in the other all these advantages are indiscreetly exposed to danger and surrendered into the hands of chance.

This proposition deserves to be considered in different lights, and in the course of its investigation I shall examine various parts of the civil and political systems of the two kingdoms ;

doms ; I shall show their connection with the constitution of the executive power, and shall point out at the same time the relations of this power with order and liberty, with order and equality. I shall confine myself to the great outlines of the subject, and without interfering with the speculations or character of men of talents whose thoughts have been thus employed, shall particularly attach myself to that method which is best calculated to reconcile and furnish a mean between doubtful opinions.

I shall first direct my attention to the construction of the legislative power, the commencing point in the social scale.

Every one knows that in England the legislative body, under the name of parliament, is formed of two houses ; that the consent of their opinions constitutes the law, and that this law receives its completion by the sanction of the monarch.

Every one knows that one of these two
divisions

divisions of the legislative body, denominated the house of commons,* is composed of representatives elected by the nation, and that the other, called the upper house, consists of peers of the realm, an hereditary dignity of royal investiture.

We perceive at first sight the majesty of a legislative body constituted in this manner, and the influence it must have on public opinion; on public opinion, not as some would mould it, by the aid of factious ideas and constrained sentiments, but as it exists, and ought to exist, in European countries and in the midst of the immutable circumstances that govern us.

The house of commons, like all elective assemblies, represents, or is at least the substitute of the general will, a will changeable because of its generality, and because of the empassioned elements of which that generality is composed. Such a division of the legislative body, the most powerful as to number, credit, and energy, is wisely situated near
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another division, which, less numerous, but unchangeable in its condition and functions, represents more particularly the *constant* interest of the kingdom.

There is thus, in the union of these two houses, a character of harmony, as well as a sort of compact and firmness ; and we see how they mutually assist each other in order to obtain the consideration with which a legislative body cannot dispense, and how, united, they acquire the degree of force necessary to defend reason against the enterprises of turbulent spirits and the incursions of malevolent geniuses.

It is different with a legislative body, composed, as in France, of a single house. In that case it soon becomes the object and levelling point of all the passions. Every one being aware that a majority of opinions is all that is necessary to decide the most important interests of an empire, exterior combinations are formed ; individual societies and political clubs

clubs put things in train to effect that majority, and sedulously study the art of directing a deliberating assembly; the art of moving it as they please by intrigue, by false reports, by alarming publications, and every other species of influence. All these manœuvres would be defeated, if the suffrage of two houses was necessary to the formation of laws; the spirit of faction would then cease to be encouraged, and the sources of an infinite number of disorders no longer exist. Morals also would gain considerably by this change; for their authority is wholly lost when a great part of the nation are enticed from a domestic and laborious life, in order to, engage in a licentious career of political passions, and the variety of plots which those passions generate.

The national assembly imagines that it reigns alone, since it is the sole legislator: but does it know the part which it is obliged to take with the irregular partners of its power? This is beyond calculation; for it is

not seldom that those who speak from fear or act from imitation, are disposed to exceed the opinions of their dictators, in order to acquire by this exaggeration the character of free agents. The English house of commons would much rather have to harmonize with the upper house and the other estate of the realm, than to exist under the yoke which is placed on the assembly of France ; a yoke so terrible that it allows not independence of opinion and freedom of thought : and on such conditions I know of no authority that is desirable, at such a price I know of no civil dignity that can be honourable.

We mean not to call in question that there are in France two legislative sections, but the organization of both is monstrous ; one is the national assembly, the other that combination of political societies to which it is obliged to accommodate itself. And we shall deceive ourselves if we imagine that by destroying these societies the evil would be entirely remedied ;

mediated ; for they contribute to the force of the legislative body, and supply the want of consideration that must inevitably result from its conformation. Respect can now no longer be imposed but by the power of numbers ; this is a consequence necessarily arising out of the system of perfect equality when established in a great empire : an important reflection which I shall more particularly investigate in another part of this work.

We have directed the reader's attention to the advantages of a regular division of the legislative body into two houses ; but we have considered the question only as it relates to popular commotion and a spirit of turbulence and faction ; we shall now observe that such a constitution would have the happiest influence on the deliberations of the legislative body itself.

It is not possible to subject the opinions of a legislative body to any regular mode of censure, because, in that case, the idea, which

it is so necessary to preserve, of its superiority, would no longer exist : by becoming however a legislative body, it does not cease to be an assembly liable to all the errors, all the indiscretions and weaknesses which are the lot of humanity. The establishing therefore this censure in the very bosom of the legislative body itself, by dividing it into two houses, was a beautiful and truly ingenious idea. Each house is thus obliged to form to itself a model of wisdom, and to have it continually in view, since this wisdom is in ordinary circumstances the most certain means of unity of opinion. It is different with a single house, which must seek to distinguish itself by extreme ideas, such ideas alone being formed to catch the crowded and capricious theatre whose suffrage and applause are the objects of its ambition. The rejection of the plan of two houses when constructing the legislative body, and the formation of this body into a single deliberating assembly, is nearly like
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giving to the empire of the passions the preference over the authority of wisdom. No one is ignorant of the facility with which the assent of numerous auditors may be obtained, either by the subtlety of argument, or by the insinuating power of eloquence, particularly when certain circumstances are laid hold of by which to act upon the mind. It is wisely ordained in the French constitution, that the projected laws shall be read three different times, at intervals of eight days ; but permission being at the same given to depart from this rule in *urgent* cases, this urgency, decreed every instant, is become a mere form, which may be employed whenever one pleases. In a word, as altercations and quarrels are more frequent at the table of your high gamesters than at any other, so when an assembly decides of itself the fate of the empire, hatreds, divisions, and jealousies must reign there with greater violence, than if that assembly had represented a portion only of the executive power.

Not one of these observations is applicable to the English constitution ; and its firmness, its consistency, the calm it diffuses, the judicious conformation and strict observance of the laws, and the regular action of the executive power, all these happy circumstances are in a great degree to be ascribed to the division of the legislative body into two houses, whose agreement in opinion fixes the sentiments of the rest of the nation, attracts respect, and is followed by obedience.

The institution of the upper of these two houses concurs in the same end, though in a different way. By its existence and intermediation, the majesty of the throne, so necessary to the support of public order, is essentially preserved to the king of England. The peers of the realm serve as a pillar and an escort to the royal dignity, as a necessary round in the ladder by which we mount to the ideas we ought to form, and the respect we ought to entertain for the chief of the state. The mind
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of man, unassisted by this graduated progress, unprepared, if I may be allowed the expression for the idea, will not form to itself the notion of an office that is without an equal. Where the distance between the prince and the people is too great, the imagination loses itself; where it is too little, familiarity breeds contempt. The idea of a king has something in it that startles us; as long therefore as the office is retained, we must wrap it in the veil of public opinion, and cultivate with great assiduity the growth of that opinion.

It was in order faithfully to adhere to the system of perfect equality or to maintain the quackery of it, that the national assembly rejected the institution of two houses of legislature, of which England and America afforded examples: but as they deviated from the system in two very considerable instances, the appointing a monarch at one end of the social scale, and at the other excluding from every political office those who did not contribute a

certain proportion of taxes, it is difficult to conceive in what consisted the necessity of observing the most rigorous levelling principles between these extremes.

The system of a vanity ever jealous of invasion, having first been gilded with a specious varnish of philosophy, has been the source in this instance of many a mistake. They determined on a single house and a single rank, and thus stripping the legislative assembly of all the aids that ancient manners proffered to their acceptance, and trusting too much to the force of truth, they will perhaps find that they have eventually brought the assembly and truth itself into contempt. They would have played a much surer game if, in a monarchical government like that of France, they had given to the house of representatives a kind of finishing and relief, by uniting to it another house composed of the most considerable men of the nation either for rank or landed property, and at the same time reserving to the
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house of representatives a larger privilege, and the right of originating all acts of taxation and finance.

The constituent assembly has discovered no knowledge of the effects of imagination on a numerous people. It presumed that it had the power to create the majesty both of the throne and of the legislative body without the succour of any other idea than the empire of the law. Time has already proved its mistake, and will prove it still more completely when the first enthusiasm shall subside which supports new opinions, and shall leave these opinions to the sole protection of reason.

The English, who have reflected for a longer period than ourselves on political constitutions, would believe their monarchical government to be of no long duration, should the house of commons, by an unexpected revolution, ever compose of itself the legislative body. Human beings are never stationary : it is the inevitable effect of the agitation of their faculties, and
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the particular tendency of their imagination. Thus the commons would not fail speedily to press too closely on the monarch, if the peers no longer possessed their present power of resistance ; they would soon dissipate the veil of opinion that encompasses the throne, and that constitutes its conventional grandeur ; and after having maimed the respect for the sovereign, they would render him, without intending it, useless to the state, and the equipoise of government would be wholly destroyed.

In the mean time, if we may thus reason respecting a country where the house of national representatives is composed of men distinguished by their education, and attached to the interest of the state by their having considerable landed property*, with how much greater force will these reflections apply to a

* The representatives of counties are required to possess estates of six hundred pounds sterling a year, and the representative of towns estates of three hundred a year.

legislative assembly, the members of which are elected and take their seats without proof being required of their possessing any fortune.

This remarkable difference between the two countries highly and intimately concerns the executive power, whose task becomes easy in proportion as respect for the laws is augmented. Now, till the most rooted, most ancient and most natural opinions shall be subverted, such citizens, as are attached to the well-being of the state by ties of property, and whom fortune has blessed with the means of acquiring the various kinds of ascendancy resulting from education, will always give to the laws of which they may be the authors a character of superior reverence. Let us never forget that the obedience of a very great number of men to the deliberations of a few individuals, is a surprising phenomenon in the moral order of things; and that we therefore hazard considerably by neglecting any of the means calculated to influence the opinions of men.

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We may sometimes by the aid of multiplied punishments, emanating from force, be able to dispense with this respect, but it is a sentiment indispensibly necessary to the mild, regular and durable operation of a political institution.

The idea, no doubt, that first presents itself, when we proceed wholly upon general principles, is that in his personal affairs every man has a right to chuse for himself : but these philosophical abstractions will not always accord with practical truth. The mistake lies in the word *choice*, a term employed to signify that dictate of the understanding by which we are carried towards the object most agreeable to our habits and our interests. The application of the word, as thus defined, admits of no difficulty, in the case of an individual placed within a narrow circle of personal interests, possessing sufficient light to direct him towards what is most for his advantage, and expressing his sentiments in a direct manner :
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but none of these circumstances take place in the act of nominating the delegates of the people to the national assembly. Does the individual nominate them himself, it is most commonly from the opinion of another that he forms his decision: are they nominated by the mediation of a body of electors in the choice of whom he has participation, he runs the risques resulting sometimes from the passions and sometimes from the partialities of that body: lastly, the majority of suffrages being understood to bind the minority, it is frequently a very small number of voices that determines the preference. To give the people therefore their true interest for their guide, is no violation of their rights, when that interest is to be interpreted by legislators in whose wisdom they have placed their confidence; for that interest is a much surer warrant of the opinion of the people, than their opinion is a pledge of their interest.

Had the national assembly then, like the

English, the Americans, and all other nations; considered property; and a property of an important kind, as securing the attachment of the citizens to public order and the interests of the state, they would have essentially served the people and the nation by making the possession of such property the sine qua non of advancement to the dignity of legislator *.

A man without property is not a complete citizen, since he has no interest in the majority of public affairs; and I cannot conceive how the deputies of the national assembly, whose sole possession is a rich fund of words, can take upon themselves to influence, by all sorts of means, the decision of questions, the result of which is perfectly indifferent to them;

* I have frequently regretted that the Notables, assembled in 1788, did not make property a necessary qualification to the being admitted into the states general. The king, influenced by their opinion, would, I believe, have assented to the measure: but they were more accommodating than the Notables in former instances, at least as to the admission of the nobles.

or at least affects them only by philosophical affinity. These men, though certain that they shall take no part in the chances of war, certain also that they shall not have to lament their fields ravaged and their houses on fire, are not less the ardent promoters of political conflicts. How many thousands of men daily pass from life to death amidst the cries of grief and despair, it matters not to them; they undertake for nothing but the crowning their exit with an apotheosis. How many others have their fortunes wrecked by the disorder of the finances, the usual consequence of political troubles, is of equal unconcern to them; they know that their own fortune is safe in the impenetrable asylum of nonentity. It is an extraordinary stress indeed to lay upon the place of one's birth, or one's baptism, to imagine that with a mere certificate from the parish register, one has a right to come forward and take a part in the ruin of a nation, and to prescribe to others sacrifices in which we have no share. A pre-
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tenfion like this cannot fail to be feen in its true light, if we contraft the petty accident on which it depends with the momentous confequences to which it may lead.

It will perhaps be faid, that the conftitution has in reality ferved the executive power by impofing on the deputies to the legislative afsembly no reftriktion as to property, fince the chance is hereby greater of its being able to act upon them by fecret means.

This affertion obliges me to confider what political rank it is neceffary to affign to corruption. It may fupply in certain governments the want of proportion between the different eftablifhed powers; but in organizing thefe powers, previously to constructing the edifice of the conftitution, the legiflator will never think of favouring corruption by making it one of the elements that are to compofe the authority of government; for, diftinct from the confideration of the immorality of fuch a fyftem, it is obvious that he can admit among
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his arrangements no force whose degree of operation is uncertain. He ought, by the prudent accord of all the parts of the social constitution, to prevent the power of abuses, and not by means of abuses secure the political harmony.

The national assembly, taken collectively, have often shewn their distrust of sources of corruption; but whenever the question has been agitated, whether an inferior salary ought not to content them, or whether they might not make a temporary sacrifice of a part of it to purposes of benevolence, individuals have always been found whose eloquence could dissuade them from measures of this kind, by insisting on the necessity of representatives in the capacity of legislators, enjoying an income that should be a sufficient security against the suggestions of interest. The certainty however of twenty-eight francs a day for a period of two years, is no very powerful safeguard; and the moment they employed, for the purpose of retaining

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their pecunium entire, the reasonings of morality, it is strange they did not recollect, as a means more natural and more effectual for preserving the independence of the assembly, the propriety of affigning a certain extent of property as a proper qualification for a member of the sovereign legislature.

A farther very interesting idea suggests itself to me upon this important subject. One of the circumstances most emphatically insisted on as the peculiar merit of the English constitution, is the equilibrium of the different powers, to which the whole edifice is indebted for its stability. This equilibrium has been applauded by some persons from reason and reflection, and by others with louder eulogium merely from imitation. I will not controvert this opinion ; but I will state one that has been suggested to myself. I believe the stability of the English government is not due solely to the balance of authorities, but the accurate and delicate harmony so to speak
that

that subsists between the trust and the inherent importance of the persons who constitute the three branches. In my opinion the union of these branches depends in a considerable degree upon the soft and gentle transition, that exists to the apprehension of mankind, between the majesty of the prince, the dignity of the peers, and the personal importance which the commons derive from their landed property and their liberal education; and I will add that the harmony of the constitution would probably expire, if either the peers ceased to be mediators between the crown and the house of representatives, or if personal estimation in the greater number of the representatives did not bring them nearly to an equality with the indefeasible eminence of the peers. I leave this suggestion to the consideration of men of thought and penetration; but I am mistaken if its principle be not true and important.

It is impossible to establish harmony between different powers by the sole effect of a jealous

watchfulness and a mutual distrust. Neighbouring nations, indeed may thus keep each other in awe, with the aid of their citadels, their fortresses, and their standing armies ; but the powers of which a government is composed, powers intermixed in various ways, and the exercise of which devolves on men subject to frailties and passions, 'are not to be retained in their place but by means of reciprocal relations nicely graduated. Were we to discard these principles of union, and substitute laws of equilibrium in their stead, it would be necessary, if I may so express myself, to place a centinel on the confines of every vanity, every sort of self-love, every individual ambition. They are ties then not counterpoises, proportions not distances, fitnesses not vigilance, which most contribute to the harmony of government : and the reason that we are continually calling the attention of legislators to the necessity of balancing one power by another, and not to the advantage of

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of blending them by judicious and natural means is, that in moral ideas, as in physical objects, the transitions and shadings escape us, while contrasts attract instant observation and never fail to impress us.

The national assembly imagine that, by pulling down every eminence and forcibly establishing a perfect level, they have superseded the necessity of proportions in the political system. But a monarch remains, and there must be steps of descent from his throne to the vast plains of equality: a great and numerous people remains, and it is necessary, that, without the aid of habitual coercion and punishments, it should respect the legislative functions of its comrades and yield obedience to their decrees. These are problems not easily solved, but they ought at least to be examined.

It should not be forgotten that the first national assembly possessed means of elevation which succeeding ones will not enjoy; for

not only was it in a certain degree composed of distinguished individuals from the late existing orders of the nobility and clergy, but the arduousness of its task, its enterprising spirit, its combats and its success, by creating it numerous enemies, have given it considerable brilliancy. I am as yet unable to ascertain what degree of lustre the second assembly will derive from its relation with so many memorable events and the awfulness of the circumstances in which it is placed ; but in future it will be from themselves, from their individual persons, that the legislators will have to derive their principal consideration ; and I must add another very bold idea, but that is not without reference to one of the characteristic features of the French nation. Never was a vaster edifice undertaken than that of the new political constitution. The art and labour of between seven and eight hundred architects were devoted to it, and twice had the earth revolved round the sun, when it was still unfinished.

finished. Stones have been accumulated upon stones, materials heaped upon materials, machines raised upon machines, and we are terrified at the prodigious mass, which seems to brave the hand of time. But I question whether the solidity of this awful fabric, this work of so many days, can withstand the impression that the ignoble or absurd formation of a national assembly may one day make on the minds of men. It is more important to be upon our guard against this sort of accident, than against the attacks of a foreign enemy; for whatever other metamorphosis we may behold, I believe the French nation will always in one circumstance remain the same, the circumstance of apprehending in a strong light any incongruity of tones and manners. This feature of character will, I suspect, survive the former amenity of our manners, and be at least the last to yield to the indiscriminate scythe of reform. Frenchmen may, in testimony of the devotedness of their

patriotism, cut their hair short behind; or let it grow before, but the genius and temper of a country, are not so pliable, and it is much more easy to make ourselves ridiculous, than to shut our eyes upon the ridiculousness of others.

In the mean time let care be taken as to that contempt of forms introduced by the juvenile and unexperienced philosophers of the present day, that contempt for all sorts of ideas which do not immediately flow from the small number of abstract principles which their understandings are able to contain. Experience will teach that the proportions of power, the grand object of attention to a legislator, are not to be supported without the assistance of opinion; and this opinion, continually fluctuating on account of the numerous elements of which it is composed, will always fix to persons, as to a center of repose.

These latter reflections will admit of no
striking

striking application as long as the present enthusiasm shall subsist, an enthusiasm that, together with the motives in which it originates, exalt in our imagination both the persons and the characters of men ; but with time all this will subside, and it is for days of tranquillity and moderation, for those long periods of political existence, that permanent laws should be made.

CHAPTER V.

Participation of the Monarch in the Legislative Power,

WE have seen in what manner the formation of the legislative body, by influencing the general sentiments of respect and deference for the laws, secunds or counteracts government in the exercise of its functions. We shall perceive still more easily how the intervention of the chief of the state in legislative acts, is intimately connected with the dignity of the throne and the efficacy of the power of which the monarch is the depositary.

In the English parliament a bill has not the force of a law till it has received the royal assent; and decrees of accusation, known by the name of bills of impeachment, are the only exception to this general rule.

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It is not thus in France. The new constitution has imposed various restrictions on the sanction of the monarch, some limiting the duration of it, others its application.

The right of opposition, called the *suspensive veto*, that is accorded to the sovereign by the constitution, can no longer prevent a law from taking place, after three successive legislatures have persisted in wishing it. In England, on the contrary, a law is never effectual without the assent of the king: and this admirable prerogative establishes a striking difference between the splendour of the two crowns.

What I have now said by no means destroys the observations I have heretofore made on the suspensive veto, both in the History of my Administration and in a Memoir that has been published. Those observations had a particular object. I was desirous of shewing that under the existing form of government, a veto, subject to certain restrictions, would have in it more reality than an unlimited right
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of opposition. In a government where the legislative body consists of a single house, the royal veto cannot be a prerogative of mere parade, cannot be a prerogative, as in England, never to be called into use. The power given to the king of resisting hasty or inconsiderate decisions, becomes here a valuable deposit and security ; and if it be rendered inert, one authority only exists, and every kind of equipoise is destroyed. The interest of the nation therefore requires that the king should be encouraged to the use of this prerogative, which he could not be in the midst of a constitution where political power is so unequally distributed, did not the prerogative carry its own limitation along with it. A suspensive veto therefore, such as has actually been instituted, superseded by the perseverance of three legislatures, was the only one that could have been made effectual. I grant that the exercise of such a right is but a kind of appeal to public opinion ; but the term of

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that appeal is sufficiently long to give the victory to reason, and this victory is the only one of which a good king stands in need. Beside, though the nature of this veto is simply suspensive when applied to laws of general and durable administration, it becomes an absolute veto as to temporary laws meant only for the exigencies of the moment. This suspensive veto would never have been granted to the king if the decision had been referred to the constituent assembly in the latter period of its fitting ; for limited as it is, it little accords with the authority that the constitution ascribes to the people, and with the weak condition to which the executive power has been ultimately reduced. Moderation on the part of government is become necessary in the use of this right of opposition. What would be the consequence were it absolute in all cases and circumstances, and were it thus become the object of every clamour and the pretext of every discontent ?

It is not therefore the limitation of the right of the veto granted to the king, but the necessity that restricts this limitation to the principles of the constitution, that ought to be considered as the circumstance affecting the majesty of the throne.

The reflections I have made on the suspensive veto would none of them have any force; were the enacting of constitutional laws submitted, as in England, to the approbation of the monarch; for as these laws may interest the prerogatives of the crown and maintenance of the social equilibrium, a veto of limited duration would not be applicable to such an order of things: but it is well known that the prerogative of the French monarch has been reduced to the sanction of laws of administration; and so great a number of laws have been comprised under the head constitution; which has been placed beyond the power of the prince, that, by this means, the royal authority finds itself infinitely circumscribed.

Many

Many indeed of the laws of simple administration, and those of the most important kind, are not subject to the royal sanction. Such in particular are the different legal regulations *respecting the exercise of the constitutional police, the administrators, and the municipal officers*; vague expressions easily susceptible of being arbitrarily extended. But the most extraordinary exception is that of the *decrees which relate to the fixing, the continuing and the collecting of public contributions*, which according to the constitution ought not to be submitted to the approbation of the monarch.

A disposition more degrading to majesty cannot be imagined; and it is difficult to conceive how legislators could resolve to represent the king as unconnected with the dearest interests of the people. Of what worth is the title of hereditary representative of the nation, which the constitution has bestowed on him, if he be no longer to represent that nation at the very moment that the sacrifices it is required

quired to make are under discussion ? Has it been remembered that, in a kingdom called upon to pay five or six hundred millions, so vast a contribution extends to all places, persons and things ; is connected with them all by an infinity of relations, known and unknown ; and that to be excluded from this grand whole is to be less than a simple citizen ?

The weak arguments alleged, to induce the assembly to render this a constitutional act, cannot be put in competition with the dangers attached to a failure of the respect due to the chief of the nation, and to the unnerving of the executive power, which is the consequence. But this interest, great as it is by its intimate union with public order, was never reverted to in the course of debate. It cannot be too often repeated, that the assembly continually acted as if they supposed the power appointed to execute the laws were self-existent ; or as if they hoped to give that power life and action by the sole efficacy of their word.

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It has been said that the states general possessed in all ages the right of consenting to taxation. No doubt: but to consent, in the French language, does not mean to act without the concurrence of others.

It has been said, that on the 17th of June 1789, the national assembly had, of its own authority, reinstituted or imposed anew the existing taxes without any interference on the part of the king. This is more artful than true; for the taxes were already established and properly collected, and the assembly did nothing more than unite its own will with the will of the monarch, before made manifest.

It has been said, that contributions proportioned to the wants of the state being absolutely necessary, should the king refuse or defer his sanction to decrees for continuing the taxes till the next meeting of the legislature, the result would be general disorder, which might overturn the constitution. But were a king to act thus, either he must be in the state

of lunacy foreseen by the constitution, or he must have become a magician, to forbear with impunity to pay the soldiers, sailors, stockholders, and the emoluments of the national assembly itself; nay, what would be the most singular circumstance of all, while indulging in all these mad acts, he would likewise rob himself of his civil list.

It has been farther said, that the king might refuse to abolish taxes burthensome to the people, or might admit only of such as should be favourable to the rich. Can a supposition like this be seriously entertained, while the constitution has subjected the king to the necessity above all things of gaining popular favour?

This truth will doubtless be perceived by the inverse of the proposition, which was maintained in another quarter of the house, where it was asserted that the king, to render himself popular, might refuse his consent to those taxes which should be most disagreeable to the mul-

titude, and thus contend for public favour with the national assembly. Every thing in this supposition is chimerical, except the rival jealousy of the assembly; and the orator, to excuse himself, thought it right to remind his hearers of the principle, too often repeated from the tribune, that the executive power and the legislative power must eternally be foes. Foes! if such be the result of the constitution, what severer criticism can be pronounced upon it? The labours of legislators should be to conciliate these powers; and the success of their efforts would have been the proof of their wisdom.

But it is not only as it interferes with the majesty of the throne, that I see cause to blame the constitutional article depriving the king of his sanction to decrees for fixing, continuing and collecting the taxes. If ever the union of the legislative and executive powers are necessary for consecrating national laws, if ever the welfare of the state and the interest

of the people require that union, it is in the institution and choice of taxes that it is most requisite and indispensable. A system of this kind might exist, the branches of which would extend to the fundamental principles of political order. Of this I will give you an example. Let there be substituted, as has more than once been proposed, in the room of the present taxes, which operate equally upon property measured by its absolute extent, another sort of tax, the operation of which should be regulated by a scale drawn from the opulence of the proprietor: such a mode of taxation bearing emphatically upon the rich, would exhibit a striking resemblance to the Agrarian laws which were so frequently the topic of tumult and debate in the Roman republic. Yet the king, the hereditary representative of the nation must remain a simple spectator of such an innovation; nay he would be required, according to the constitution to proclaim and enforce the execution of such a law,

law, for which his ministers would become responsible.

I ought farther to observe that, in the regulation of all taxes, the consent of the chief of the administration, and the sober investigation which ought to precede his consent, cannot be indifferent to the welfare of the state. It has been said that, if it were necessary to know the opinion of ministers, that opinion need only be asked in the presence of the assembly. But in what character must they give their opinion on such a subject? They could not give it in the name of the nation, since they are not the representatives of the nation : they could not give it in the name of the king, since the consent of the king relative to taxation has been rejected, and as it were extinguished by law. In treating this question, and giving their opinion in a legislative deliberation, ministers would then suddenly exercise a function foreign to the trust reposed in them by the king, and having no legal connection with either of

the two constituted powers. The monarch would insensibly find himself reduced to the quality of an elector of ministers, and transformed as I may say into a sort of active scrutator for the greater ease of national assemblies. All this might be very indifferent under a certain system ; but it must be allowed that this and many other circumstances can neither be reconciled with the respect due to the monarch, the dignity of the throne, the quality of chief of the administration, the activity of the executive power, the title of hereditary representative of the nation, nor with any of the great advantages attached to monarchical government.

It has been said, that the assembly would place the love of the people for the king secure from their inconstancy, by not making him a party in the establishment of taxes ; but let it also be considered, that neither will he have any share in their abolition or in their reduction : beside, from the taxes not originating

nating with him, the fimple prerogative of the fanktion, which ought to have been preferved to the chief of the nation, would never have fubjected him to reproach.

I am alfo at a lofs to conceive what agreement can exift between two legislative ideas which feem fo evidently at warfare; the one is the impofing of taxes without the approbation of the king; and the other is the granting to his authority every neceffary power to fecure their exact payment. Is not this affording to the negligence of adminiftration, or to its want of will, a very natural excufe? May it not allege that the delay of payment originates in the ill choice of taxes, or in the injudicious manner in which they have been laid?

Is there not, laftly, a kind of contradiction and inconfiftency in abfolutely excluding the king from the fystem of taxation, while his fanktion is required for all expences and loans? For he is thus made a party in engagements,

without being a party in the means taken to fulfil such engagements.

Observations the most simple and most common often give birth to sublime ideas, when such ideas have any relation to the subject in question ; and I cannot help saying to myself at this moment, it is a misfortune to France that roads which have long been open should serve as avenues to the temple of reason : for had it been necessary now first to open them, our ardent labourers in legislation would have been satisfied with that honour, and would then have led us by the shortest and best paths.

CHAPTER VI.

Limitation of the Powers that compose the Legislative Body.—Revision of the Constitutional Articles.

THE three united wills of the commons, the lords, and the king, form in England the legislative power; and this power, thus constituted, has properly no limitation.

To the guardianship of these three branches of the legislature is the code of ancient laws intrusted, and whatever they unanimously determine is reputed legal.

Public opinion protects with its shield the principles that essentially interest national liberty, but it leaves to the three powers which govern England, powers so admirably constructed, the faculty of correcting or modifying the trivial imperfections of the social edifice,

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The English understand not how an assembly of deputies, convened from time to time, should surpass in understanding the united science of the three political guides to whom the nation has given its confidence.

The English, long emancipated from the schools of legislative philosophy, cease absurdly to reverence those high sounding words so vaunted by ourselves, *the general will* and *the national sovereignty*, those vague ideas whose regular application is impossible, and which become a source of error and delusion when forced from the circle of abstractions, to be converted into active maxims and practical truths.

The general will, the sovereignty of the nation, can never exercise a real authority without being made known, without quitting their moral essence, in some manner to assume a corporeal form. You, the legislators of France, have acknowledged as interpreters of the general will a certain number of deputies,
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chosen by electors whose nomination vests in a portion of the people ; yet, while submitting all these deputies to the same mode of election, you have told us that some of them represented the nation to enact laws of administration, and others to enact constitutional laws ; thus all is supposition, all is arbitrary in this arrangement. How can the English be said to forsake principle, as you affirm, because, without any distinction of circumstances, they acknowledge as interpreters of the general will, the united sentiments of the king, lords and commons ? Principle consists, according to you, in the sovereignty of the nation, in the supremacy of the general will ; but the English constitution has not violated this principle ; it has only, like the French constitution, given an interpreter to authorities purely abstract ; and the question is which of the two nations has been least mistaken in its choice.

The English nation was not willing that the essential foundations of the social fabric
should

should be shaken at every interval, by deputies legally invested with an adequate power.

The English nation was not willing that trivial alterations, but such as experience strongly recommended, should be rendered impracticable. Corrections which depend on a general system of redress, will always be uncertain, on account of the difficulty of combining a plan of general revision with the circumspection that great innovations demand, and of adapting it, at the same time, to less important amendments.

The English therefore, without going as we have done, to the flame of metaphysics to kindle their lamps, but guided by the light of good sense or of experience, a light less dazzling but more steady, have supposed that the powers worthy of regulating their civil and criminal, their commercial and financial legislation, and all the active departments of their government, were equally capable of superintending the movement of the political machine,

chine, and of rectifying such wheels as time might impair or experience prove to have been originally defective.

The English, persuaded that men skilled in the knowledge of the well-being of a state, if they have at the same time a real interest that should lead them to desire the continuance of that well-being, are the best interpreters of the *perpetual* will of a nation, a will still more vast than the general will, have placed the public welfare under the entire guardianship of the three powers established by the constitution.

Public opinion which furrounds these powers and the necessity there is that they should harmonize with it, gives the nation the most perfect tranquillity respecting the use that will be made of the authority with which they are entrusted. It is impossible to conceive, in politics of a system of precaution that ought not not to be terminated by confidence; for the controllers and the controlled, the superiors

and those who act under them are in all cases men; if therefore a sufficient provision be made for the existence of this confidence in the scheme of the authors of a constitution, they have discharged their function as far as the imperfection of human affairs allows it to be discharged.

We shall here present a contrast that will shew to what strange ideas men are obliged to resort, when in forming a political constitution, they are desirous of reforming, as they have constituted it, by the aid of suspicions and distrust.

The seventh head of the French constitution gives a minute account of the mode of proceeding to be adopted in the revision of that work. I shall cite it entire to enable the reader to follow with facility the remarks I have to make upon it.

T I T L E VII.

Revision of the Constitutional Decrees.

I. The national constituent assembly declare, that the nation has the imprescriptible right to change its constitution ; nevertheless, considering that it is more conformable to the national interest to make use only, in a way prescribed by the constitution itself, of the right of reforming such articles as experience might prove to be inconvenient, they decree that the mode of proceeding shall be, by an assembly of revision, in form following.

II. When three successive legislatures shall have manifested an unanimous desire for the alteration of any constitutional article, the revision demanded shall take place.

III. The ensuing legislature and that next following shall not be at liberty to propose the reform of any constitutional article.

IV. Of the three legislatures who shall hereafter have power to propose alterations, the two first shall not attend to this business till the two last months of their final session, nor the third till the end of their first annual session or the beginning of their second.

Their deliberations, on such subjects, shall be accompanied with the same forms as legislative acts ; but the decrees by which they shall have manifested their desire shall not be subject to royal sanction.

V. The

V. The fourth legislature, augmented by 249 members to be elected in the different departments, by doubling the ordinary number furnished by each department according to its population, shall form the assembly of revision.

These 249 members shall be elected after the nomination of representatives forming the legislative body shall have been terminated, and a separate process shall be made thereof.

The assembly of revision shall only be composed of one house.

VI. The members of the third legislature which shall have demanded a change, cannot be elected in the assembly of revision.

VII. The members of the assembly of revision, after having taken together the oath "to live free or to die," shall swear individually that they will confine their decrees to the objects presented to them by the unanimous wish of the three preceding legislatures; that they will maintain, in other respects, with all their power, the constitution of the kingdom decreed by the national constituent assembly in the years 1789, 1790 and 1791, and that in every thing they will be faithful to the nation, the law and the king.

VIII. The assembly of revision shall then proceed without delay in the business to be submitted to their investigation, and as soon as their labours shall be terminated, the additional 249 members shall withdraw, having in no case the power of participating in legislative acts.

Let us take a cursory view of this scaffolding, the invention of our legislators whereby to improve certain parts of the present, or erect a new fabric, so urgent and so highly necessary.

We perceive at first sight, that they have rendered immutable for ten years, not a small number of principles worthy of immortality, but three hundred and twenty-nine articles *, of which several have been already reprobated by the awful verdict of experience. Our first legislators have commanded the government to march, without giving it any principle of motion, and have at the same time laid an injunction on their successors neither to aid it, nor release it from its fetters. They have sown all the seeds of disorder by instituting a political system in which no proportion has

* There are not 329 constitutional articles distinctly numbered ; but several of the articles, reckoning by the figures, contain different injunctions under one head, which injunctions are distinguished from each other no otherwise than by being broken into paragraphs.

been observed, and have prohibited the equipoise to be restored till the period which they have thought proper themselves to fix. Never have there existed testators more despotic, and never legatees more unresisting and obedient.

Though an improvement of the constitution be rendered morally possible, after ten years waiting, yet upon a nearer inspection of the conditions imposed on every sort of change, it is obvious that no modification even of the smallest part of the new French system can be practicable, without a concurrence of circumstances beyond all the rules of probability.

What for example is required merely to render legal the convocation of an assembly authorised to pronounce upon the passing or rejecting of any proposed amendment? It is required that three successive legislatures, the two immediately succeeding the constituent assembly counting for nothing, shall perfectly agree, not as to a principle, not as to a general idea, but as to a new constitutional article ex-

pressed by one of the legislatures with all the precision of a decree. Let us suppose that by chance three succeeding legislatures were to agree upon the propriety either of making property necessary to be eligible to the national assembly, or of forming in future the legislative body of two houses, or of increasing the royal prerogatives; the unanimity of their opinion respecting the general principle, would not authorise a convention of the assembly of revision, unless their desire respecting the nature of the change itself, and that desire expressed by a decree, be also uniform. How can a concurrence and uniformity of this kind be expected? I know no instance upon record of such complete agreement, except the grammatical agreement of adjectives and substantives; and to require that the self-love of different men, all of them Frenchmen, all of them smit with the ambition of distinguishing themselves should thus harmonize, is subjecting every amendment of the constitution to

conditions which we may well despair of ever seeing fulfilled.

It seems as if the compilers of the project of revision, adopted by the constituent assembly, had been sensible of the embarrassment in which this project involved them ; for they endeavour to evade it by a construction that has by no means the perspicuity which a question of such magnitude required.* The expression, *when three successive legislatures shall have manifested an unanimous desire for the alteration of a constitutional article*, does not clearly tell us whether it shall be sufficient, for the convocation of the assembly of revision, that three successive legislatures desire any kind of change in this or that article of the constitution ; or whether it shall be farther necessary that they should agree as to the nature of the change : these ideas, so extremely different, are distinguished only by a grammatical subtlety in the choice of the article that precedes the word *alteration*. Let us explain

explain this singularity, so impardonable in a business in which the fate of an empire is interested. *To manifest an unanimous desire for the alteration*, signifies in the French language that the unanimous desire shall determine the particular kind of alteration ; but *to manifest an unanimous desire for an alteration*, would denote that the unanimous desire respected any alteration whatever. Is it possible that grave legislators should have wished to separate two ideas of so opposite a nature by so imperceptible line ; is it possible they should no otherwise have distinguished them than by the difference between the definite and indefinite article, had they not themselves been perplexed ? But they have not by this artifice saved their reputation ; for the latter interpretation would be of no more avail than the former, or would at least be attended with equal though different inconveniences, since it would give to the assembly of revision so extraordinary a power that neither the pre-

ceding nor subsequent legislatures would be willing to acknowledge it. Supposing three succeeding legislatures to be actually of opinion respecting the expediency of admitting property among the conditions necessary in future to be eligible as a representative; it would remain with the fourth legislature alone to fix the quota of that property. Supposing them also to be of opinion as to the establishment of two houses; to the fourth it would again belong to determine upon the nature and attributes of this new branch of the legislative body. We thus see that the power devolving on the fourth legislature would be immense, and far superior to the influence of the united wish of the three preceding assemblies.

Let us then abide by the literal sense which the article of the code of revision presents; a sense which seems also confirmed by the obligation imposed on the legislatures of passing their desire of a change in the constitution into a decree, since this form is more applicable

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ble to precise than to general ideas. By thus understanding it, it will not be less true that the constituent assembly failed to express themselves with the clearness which a measure of so great importance required; and I shall presently have occasion to show that in another embarrassing situation they adopted a similar obscurity.

But to continue my remarks.—A miraculous coincidence between the precise wishes of the three legislatures, will not be sufficient to legalize a new article of the constitution; it will only give the power of convoking a more numerous legislature than the preceding ones, and to that fourth legislature will the right belong of declaring, whether the desire of the three former ought to be received or rejected.

In short, as if all these shackles were not sufficient, little difficulties of execution are interposed, which will equally obstruct the revision of the constitutional code.

Two months only are allotted to the legis-

latures for their deliberations on the constitution ; a very short period, particularly when we consider that every projected decree must be read three times, and at intervals no one of which is to be less than eight days.

It has farther been ordained, and that also constitutionally, that if the third legislature, in accord with the two preceding ones, should demand a change in the constitution, none of its members can be eligible to the assembly of revision. Now this assembly will possess in addition to its own, the legislative functions : and the members of the third legislature therefore by having voted for a change in the constitution, will forfeit their right of being eligible to the next legislature. Such a condition, which is truly penal, will be a restraint on their suffrages, by making their private interest militate against the convocation of an assembly of revision.

The motive in which this measure originated is obvious. The committee of constitution

stitution were desirous of preventing the deputies, who should decree the alteration of a constitutional article, from becoming judges of their own decision by having a seat in the assembly of revision. But on the same principle they ought to have excluding the deputies of the first legislature that voted for the alteration from being eligible to the second, and the deputies of the second from being eligible to the third, for, by the constitutional code, the third legislature has no more influence than either of the two preceding ones in the convocation of an assembly of revision, since it is the unanimous desire of the three which can alone authorize that convocation.

But it is impossible not to see that all that part of the French code, which relates to the revision of constitutional decrees, has been drawn up with a precipitation totally unbecoming the importance of the object.

I have already said enough on this head; but I cannot help pointing out what may be
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the whimsical result of one in particular of the regulations adopted by our first legislators. According to their system, an entire uniformity of opinion between three *succeeding* assemblies is requisite to any amendment whatever in the constitution. It is the word *succeeding* that is the object of my present animadversion, and I say that by this regulation the majority of the French nation, the majority of its representatives, the majority of legislatures, might earnestly wish for a change in the constitution, without ever having the power to effect it; and even that national sovereignty so ostentatiously cited, would thus be fettered and kept at bay by a mere form. Let us in a few words display this proposition in its true colours.

The legislatures A and B shall be of the same opinion respecting some particular change in the constitution.

The legislature C shall think differently: thus the opinions of the two former will be of

no

no more avail than if they had never been expressed, since there must be a similarity of desire in *three succeeding* legislatures to authorise a convocation of an assembly of revision.

Afterwards shall come the legislatures D and E agreeing perfectly in sentiment with the legislatures A and B.

But if the legislature F, which is to follow D and E, shall not think as they do, their opinion will be of no effect.

We have already, upon the supposition we are making, four legislatures out of six, whose unanimous desires are superseded and annulled by the contrary sentiments of the other two. The hypothesis may be extended infinitely farther, and through the whole the smaller number will be found to prevail over the greater.

Such however is the possible result of the constitutional article of which I have been treating.

How many other reflections of still greater import-

importance might suggest themselves, when examining the method devised by our legislators for proceeding to the revision of constitutional articles? Has it been considered what a multitude of intrigues and cabals would arise from the circumstance of any one of the principal articles becoming a subject of animadversion, and the amendment of it adjourned from legislature to legislature, in the midst of a thousand contending passions, and after having been discussed through the whole series of clubs? Have we sufficiently reflected on the impossibility of a proposition torn from its connection, from those articles which serve it for modification or for balance, being understood precisely in the same manner by successive legislatures? The constituent assembly, after a discussion of two years and a half, appear not to have fully comprehended the different bearings of our new political system, a system which was their own child; and yet it is expected that in the space of two months, a
new

new legislature can select from it its errors, can replace them by provisions of a wiser sort, and transmit the whole by way of appeal to succeeding legislatures and to public opinion. A proceeding like this would scarcely be applicable to a constitution generated by the wisdom of ages, that had undergone the trial of every sort of event, of consequence that had few defects, and respecting which therefore it was of little importance whether the best method of correction were or were not adopted. Thus in England, since the period of the revolution, and since government and liberty have been both secure, the inequality that subsists in the representation of the people in parliament, is borne without dissatisfaction. It is well known that this inequality has never been the spring of a single law contrary to the interest of the whole ; it is well known that where a nation is in accord as to its principles and its conscious felicity, its best representative is that spirit of intelligible and moral truth

which

which may be expected to pervade them ; of consequence it is known that, as soon as public opinion shall attach any importance to the inequality which has been so frequent a subject of invective, it will be superseded. But they are unwilling to redeem such an imperfection, or imperfections greater than this, by the slightest innovation upon the character and importance of the king and the parliament, of those two powers whose fortunate agreement constitutes the true security for the permanence of the blessings of the English constitution.

Meanwhile these reflections are a reproach to the genius of the French legislators ; since, by a contrary proceeding, they have rendered incorrigible, both as to its principles and its moral effects, a constitution new in all its parts and already at open war with experience ; a constitution destitute of the requisite means for the maintenance of order and true liberty ; a constitution in which men of discernment
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in all countries have discovered numberless imperfections of every kind.

In my last publication I invited the assembly to comprize under a small number of heads their constitutional articles; and ten or twelve I conceive might have been sufficient to give to the fundamental principles of the French government and to civil and political liberty, all the stability that is derivable from national conventions. I am well aware that then the resemblance of those articles with the positions of the king, 27 December 1788, prior to the convocation of the states general, would have been apparent: and this was a circumstance which they were desirous of keeping from the light. Be this as it may, by reducing the constitutional articles to their proper size, a degree of solemnity might have been given to them which would have impressed them on every mind. It might have been considered, whether it would not be expedient to insert them at length in the oath of allegiance

ance and fidelity required of the citizens. By acting thus our legislators would have paid due homage to this religious bond ; whereas by obliging the inhabitants of France to swear *that they will maintain with all their power the constitution decreed by the constituent assembly, in the years 1789, 1790, and 1791*, and by composing that constitution of 329 articles, they exact a rash oath, which the best informed men are liable every instant to violate without knowing it. A form like this is truly an original idea, in which we can perceive nothing of the genuine character of a legislator.

After reducing the constitutional decrees to a small number of principal heads, respecting which an enlightened nation can never vary its opinion, it would have been wise in the assembly had they ranged in a second class such dispositions as required to be sanctioned by the voice of experience. Then, in order to give time for obtaining that sanction, had they restrained a legislature or two from
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making alterations, such a restriction, rational in itself, would also have been productive of the greatest advantages ; on the one hand, the foundations of social order and public liberty would thereby have been secured from every kind of commotion ; and on the other, modifications of a different nature, the expediency or necessity of which should be acknowledged, would have been rendered more easy and expeditious. Many of the American states have conducted themselves in this manner : their legislative body may make alterations in the constitution, but certain essential articles are excepted which the hand of reform is not allowed to touch. On our parts we have thought nothing too sacred to become the subject of controversy. Supposing therefore the first legislature that is regularly authorized to revise the constitution, should propose a new defalcation of the royal authority, or even plainly and without disguise a republican government ; I ask whether this proposition, the

second discussion of which is reserved to the next legislature, at the distance of twenty-two months, will not, during the interval, annihilate the authority of the monarch and the activity of the executive power reposed in his hands? We might just as reasonably think of maintaining public credit, if one legislature should propose the expediency of bankruptcy to the consideration of the legislatures that follow.

Another circumstance occurs worthy of observation. According to the law of revision, it is neither more nor less difficult to change the monarchy into a republic, then to modify the most trivial article, inserted, no one knows why, in the constitutional code. I will give a single example, and it will afford an amusing contrast with the reflections in which we have just been engaged. In the second article of the 14th Chapter of the constitutional code, it is provided, that the king shall nominate *the surveyors general of works, the sub-surveyors*

veyors of civil edifices, and only one half of the surveyors of administration and the sub-surveyors of works. Now I desire to be informed whether these exact proportions be so related to the laws of eternal truth, that the calculation merited to be inscribed in the constitution and immutable character of the French empire?

I should never have done were I to animadvert upon every thing that is whimsical and dangerous in the plan invented by our legislators for correcting the defects of the constitution. It is to the vicious formation of the legislative body that these singularities are in a great measure to be attributed. It is made to consist of a single house, and the legislators were afraid of trusting to that house the power of modifying the most trifling articles of the constitution. They would not even grant it the right of summoning a national convention, thought it should deem the revision of certain constitutional decrees ne-

cessary : and it was this which led them to require, for every kind of change, the unanimous wish of three succeeding legislatures, as well as to subject that wish to puerile formalities, unworthy the dignity of the subject to which these formalities are applied.

No doubt, if any thing could increase the attachment of the English to the great principles of their constitution, it would be to observe the legislators of France, with the advantage of all preceding experience, and hoisted, if I may be allowed the expression, to the pinnacle of theoretical and metaphysical system, troubled and confounded in their operations, and mistaking subtlety for wisdom, and singularity for genius.

CHAPTER VII.

*Convocation of the Legislative Body and Permanence
of its Sitzings.*

HERE also we shall have an opportunity of remarking in what manner the dignity of the throne and the supremacy of the monarch have been cherished by a free people. The English have conceived that the exertion of the executive power depended thereon, and they have never forgotten that the object of this power was to secure public order and the free movement of the political machine. Whatever consideration therefore could be given to it without endangering the principles of the constitution, they have not hesitated to bestow. These are views of sound policy ; whereas our aim has been to compose trophies of liberty out of the entire spoil of government,

ment, by leaving the care of the general harmony to chance.

In France, the legislative body is permitted to assemble of itself, at an appointed period ; and the primary assemblies, with whom the election of the new deputies commences, are to be convoked every two years by the departments, without any previous notification or any authority for that purpose on the part of the sovereign ; also the legislative body being once assembled, the prorogation and resumption of its sittings depend entirely on its own pleasure.

In England, a parliament cannot subsist longer than seven years ; but the constitution empowers the monarch to shorten its duration. The new elections are ordered by royal proclamation, and to the authority of the monarch it equally belongs to fix the opening of parliament, and to terminate its session.

These august prerogatives give no umbrage to the English people and excite in them no
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apprehensions. A wise nation does not construct its system of government altogether upon the basis of suspicion: suspicion has no place when prudence has already laid the foundation of a lasting harmony. How can it be supposed that the king of England should fail to convoke the parliament at the proper season, when it is already settled that no taxes can be levied but by the authority of parliament, and none of the expences of the government be paid; and when the laws relative to these subjects, as well as the law for prolonging the discipline of the army, have force only for the term of one year? The right of appointing the period at which parliament shall assemble is no longer any thing than an honorary prerogative, and merely intrusts to the king the power of chusing between different days within a very short period; a power which, thus circumscribed, may frequently be very conducive to the public interest. If the king of England were to acquire

the power and feel the inclination to levy taxes of his own authority, of what use would be the faculty attributed to the parliament of assembling without his sanction even if they had this faculty? The kingdom would then be in a state of crisis; no question of mere form could either ruin or save it; its destiny would depend upon the effort of all citizens, lovers of liberty and law. On the contrary, the idea of accumulating precautions without end and of sacrificing upon every occasion the majesty of the prince, introduces a system of mistrust which nothing can put an end to; and which, by perpetually multiplying occasions of offence and irritation, renders mistrust every day more unavoidable. It is thus that, in France, an attempt has been made to introduce a social order unqualified with mutual civility and deference; but the chains of iron, which are thus employed, will not equal in duration the silken cords which bind together the parts of the English constitution.

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The important prerogative, enjoyed by the English monarch, of dissolving the parliament and ordering new elections, was not essentially applicable to the French constitution ; since that constitution has limited the duration of legislatures to two years, a period too short for any considerable change in the sentiments of the electoral assemblies to be expected. It would therefore be useless to have recourse to a new election, if, during the short life of a legislature, the reprehensible conduct of its members should suggest such a measure. But we cannot consider in the same light the liberty given to each legislature to continue its sittings without interruption ; for as this interruption will depend solely on its own will, we may be assured that it will never take place. How indeed can we be so absurd as to imagine that they will be disposed to quit a theatre on which they have only two years to exhibit ? The period will be thought too important, too brilliant, for a moment of
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it to be renounced. A political existence of twenty-four months is scarcely sufficient to give each deputy time to record his eloquence in the *Logographe*, and to send down to his district or municipality, a specimen of his lucubrations. Out of the 745 members, there will probably in all cases be 740 perfect novices in the career of glory. It will be necessary they should make a trial of their strength in this contest; it will be necessary that they should enjoy, some their success, others their hopes, and others their share in the common triumph. What will be two years for so many gratifications! The twenty eight francs a day, punctually paid, may be likewise an imperceptible tie; this is only a supposition, but surely the thing is possible. How delightful also will it be to these gentlemen, daily to issue their orders to their first commis, the king of France! How delightful in the apprehension of some of them, to go in solemn procession four a breast and cause
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the folding doors of the palace of the representative of the Capetian race to be opened to receive them ! How delightful to summon at their bar, with a word, all the ministers of the sovereign ! Is it in human nature voluntary to resign functions so captivating as these ?

Meanwhile if the sittings of assembly are at no time interrupted, and if the law has ordained that one legislature succeed immediately to another, their permanence will be established both by fact and by right ; and the consequence will be that the executive power will lose all its influence and consideration, since the habitual presence of a more efficacious authority must keep it forever in obscurity. And as business naturally feels the attraction of power, provided the center of that power be always accessible, all proposals, communications and requests will be made to the national assembly. The assembly, easily consenting to the increase of its authority, will
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become every day more than the preceding day the subject of all wishes, and the administrators of all powers. It will merely continue to the executive government certain objects of an unmanageable or an unpopular sort, reserving to itself the privilege of censuring its measures in proportion as the event shall show them to be successful or unsuccessful.

The king of England, notwithstanding his eminent prerogatives would, I conceive, be unable to preserve the consideration essentially necessary to his political functions, if the constitution had not granted him the right of proroguing the sittings of parliament. He hereby judges of the moment when, the regular business being at an end, there would be reason to apprehend that the activity of a numerous assembly might degenerate into a dangerous commotion, and insensibly give birth to a spirit of faction and intrigue. A social order is a work of wisdom and of proportion.

portion. This our legislators were unable to perceive ; because they drew all their lines from an abstract principle and extended them as far as it was possible to extend them. We have here their principal fault and the source of all our misfortunes. The truth meets us at every step. They have said : The nation is the sovereign power, the legislative body is composed of its representatives ; they have therefore the liberty to deliberate, debate and decree as long as they please. But the nation is the sovereign only in a definite manner, the legislative body is its representative only in a definite manner, and of consequence in a definite manner only ought that body to exist. This is what the English, those philosophers in practice, feeling a due respect for experience, have not failed to discover and to acknowledge. Their meditations and experiments had prepared the way for us ; but vanity and presumption would not permit us to take advantage of this succour. Our legislators

lators must set out from the remotest point and pursue a route never trodden before ; and in so long and wearisome a journey, their strength failed them, and that at a considerable distance from its end.

I shall now present a few observations on the period fixed for the duration of legislative assemblies. This period in France is limited to two years, in England it may extend to seven : but, if viewed in its connection with public order, the term of two years will be found to be productive of great inconveniences. Uniformity of principles in legislation and their stability, have always been found the most effectual way of securing obedience in the people and their respect for the laws. But how can we entertain the slightest hope of this permanence and harmony, if there be a continual change of legislators ? The first effect of a too transient authority is an eagerness to act and an impatience to distinguish itself ; and as time is necessary for enjoying
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the honours of wisdom and prudence, when men invested with considerable power are deprived of this time, it is natural that they should pursue a glory whose harvest may be more speedily reaped. Now that glory will commonly be found to consist in aggravating principles till they verge upon absurdity, in strong measures and a specious heroism; and such proceedings dangerous at all times, are doubly so at the moment when the revolution is already complete, and when all that is necessary is the spirit which preserves, which fortifies and which perfects.

What unfavourable consequences also may be apprehended from this perpetual circle of classes and novitiates, resulting from the too frequent renewal of legislators? How much time must be lost! what portion of apprenticeship must be endured by the nation from each successive assembly! How often must the mere ceremony of learning to spell in political science be repeated! Let it be

remembered that legislation is not the only business of national assemblies : their privileges and their propensities lead them to break ground within the entrenchments of administration ; their committees divide the government of the kingdom, and by that time they have learned their business, they are obliged to give place to their successors, who begin all over again, and are indeed compelled to this process, that they may not lose their way in a terra incognita.

It is also a fault against social order, to assemble the people too frequently for the purpose of elections, and thus continually to revive in them the consciousness of their strength. “ What ! are not the people our sovereign, our master ; and can we have too many opportunities of knowing their will ? ” Such is the objection which men who hope to govern this master, will not fail to repeat ; who mean to inveigle it by servile flattery in order to establish their own tyrannical authority.

authority. I leave them to their consciences ; it would be disgraceful to contend with the hypocrisy of such characters.

It is with more sincerity that another mode of reasoning is adopted. By a renewal of the members of the legislature every two years, they are placed, it is said, more out of the reach of seduction. On the contrary, will not a legislator, the mere bird of passage, seeing his return to the rank of private citizen at so short a distance, be more easily wrought upon, than if his political existence had been of longer duration ? Will he not be more easily wrought upon, with a very narrow space of time in which to conceal his shame, than if he were obliged to endure or to dissemble it for a series of years ? I am not expert in calculations of corruptibility, but I will venture to make one on the present occasion. Suppose a government, attentive above all things to purchase the good will of the legislature, is it not obvious that it would in this respect have

a more extensive magazine of seduction, if the authority of the legislature were confined to two years, than if it were of much longer duration? In this short period promises may pass for current payment, since there is not time to try their reality; whereas on the contrary when the deputies hold their appointments for six or seven years, as in England, the moment of performance must arrive, and promises therefore cannot be employed but with moderation and precaution.

But whether these calculations be just, or whether there be others of greater or less force, let us equally disdain them all; let us fix our attention on nobler and more dignified objects, and say: The virtuous man is always secure from the influence of corruption, and the man prepared by his character for such sort of impressions, yields in a moment as effectually as in a day. Let us sedulously then cultivate principles of honour and of virtue, and never imagine that any thing can make up

for the want of them. They alone act in every sense and serve us in all cases. They alone fight for us and protect our weakness. They alone also, when they are held in veneration, assure to nations tranquillity and happiness, and suffice to mark out to the genuine legislators of mankind the path they ought to pursue.

CHAPTER VIII.

The Judiciary Power.

THE national assembly have diffused the same spirit through all their institutions, and desirous to assimilate every thing to their favourite principle, have forced all occasions into the service of a single idea. Liberty, guaranteed by the power of the people, has formed the sole object of their speculations ; while public order, guaranteed by the authority of government, has never occupied but by accident any share of their attention. The truth of this remark will be found in the manner in which the judiciary order has been constructed.

The judges, by the new constitution, are to be nominated by electors, the choice of whom vests

vests in the people : The particular appointment of the public accuser depends also on their suffrage ; and new elections are to take place every six years.

In England the king has the nomination of the judges, and they cannot be removed from their offices but in case of misdemeanor.

The difference is extreme, both as connected with public order and with the majesty of the throne.

Independence, that first quality in a judge whose function it is to suppress vice and avenge innocence ; and the virtues of impartiality and firmness that are its hand-maids, can never exist in their plenitude, if the continuance of the magistrate in his office or his removal to a more desirable post, be made to depend on the suffrage of those very men over whom it is most necessary that a severe authority should be exercised.

There are doubtless judges whose characters will always entitle them to the rule of excep-

tion ; but I am considering the question as connected with human nature in general, and I assert, that by placing the arbiters of our dearest interests between fear and hope, we subject to the influence of personal motives men, of whom it has been said, that they ought to be as impassible as the law itself.

Meanwhile was there ever a constitution in which the virtuous firmness of a magistrate would seem more indispensable ? Justice is publicly to be administered, in the midst of a people informed of their strength and inebriated with their power ; in the midst of a people kept in irritation by the habitual spectacle of the disparities of lot, the inevitable consequence of the long establishment of a nation, and of the daily increase of wealth ; in the midst of a people, naturally vehement, and over whom the curb of morality is held more loosely every day ; in the midst of a people, in short, who now accost their rulers with the sword of vengeance in one hand, and
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in the other the party-coloured list of every honorary and lucrative office, to which they alone have the privilege of nominating. In this state of things it will be with their eyes fixed on their masters and renumeratora that magistrates, elected by the people, will in civil causes, where they are the sole umpires, decide between the parties, and in criminal ones will direct their charge to the jury and record the verdict. Reduced however to the number of three, four, or five at most, should all the judges of the tribunal be present, their responsibility almost becomes personal: but who does not know with what facility magistrates can dissemble their partiality, by cloathing it in the form of that justice of which they are the sole interpreters?—I have said that in England the judges are appointed by the king, and are not removeable but in case of misdemeanor. It is proper to add, that they cannot be members of the commons house of parliament. Thus have the English

taken as much care to preserve the independence of their judges, as we have neglected this important consideration in the whole arrangement of our judiciary code.

Let us farther observe, that the judges in France, subject every six years to new elections, can never acquire the ascendancy resulting from a long exercise of their functions. Reputation is in the judiciary profession but slowly acquired; purity of heart and rectitude of judgment do not discover themselves with the same promptitude as talents; time on the contrary is necessary to expose to view these invaluable endowments, and attract towards them the homage of mankind. At the same time, as often as we deprive these magistrates of the requisite means for gaining personal consideration, we expose them the more to the temptations of interest; and we ought never to drive to despair the love of reputation, a sentiment that has so many dangerous passions for its rivals.

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In fine, it is a duty we owe to the inhabitants of a country, to give them, as arbiters of their fortune and their honour, not only men worthy such a function, not only men whom a small number of electors, influenced by different motives, may approve, but men whose long display of judiciary virtues have added dignity and lustre to the judgment seat: that precious lustre which diffuses a calm through civil life, and tells us, long before we stand in need of justice, that, whenever the day arrives, we shall find it administered to us by magistrates, who know what justice is, and are surrounded with the necessary consideration to enforce and maintain it.

The present state of the judiciary order in France offers us no picture like this, nor is it possible it should. Which of us, for instance, though residing in the very centre of Paris, could discover, by the public voice, the opinion he ought to entertain of the judges of the first, the second, the third, and so on as
far

far as the fixth (*arrondissement*) jurisdiction of the capital? And supposing that we began to acquire some insight into the business, it is probable that other magistrates would by that time be appointed to the tribunals. The method of distinguishing them by numbers, serves also to render our attention more vague and more painful. Precisely the same mode has been adopted to designate the regiments of regular troops. Our legislators were desirous, one would suppose, by discolouring every thing, to establish equality in the very domains of imagination.

The judges in England are chosen from among men enjoying the highest distinction both for literary and for moral qualifications, and it is seldom that the public voice does not anticipate the choice of the monarch. This choice is doubtless attended with less difficulty where, as in England, all the superior functions of the judiciary order are executed by twelve magistrates only; and from the circumstance

cumstance of their going the circuits, which the judges are bound to do by law, a greater number is not found requisite : but in France where no such form is introduced, and where local tribunals have been multiplied in proportion to the different sections of the kingdom, it would not have been reasonable that the nomination of all the members of these tribunals should have vested in government ; and the monarch would himself have been willing that some sort of restriction should be put upon his choice. But, instead of adopting, in this respect, a system of wisdom and of deference, the royal dignity has been degraded in the very forms of the law, for the following are the words of the constitutional article : “ Justice shall be gratuitously rendered by judges, chosen for a time by the people, and installed by letters patent of the king, *who shall have no power to refuse them.*”

Who shall have no power to refuse them !

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Thus is the monarch introduced into this important article of political order, merely as a commis, one whose name is affixed out of form ; and the king of the French is obliged to give letters of instalment to any judge that shall be pointed out to him, whatever proofs government might possess of the immoral conduct of this new arbiter of our honour and our property. There is something tyrannical in this restraint, and the very expressions of such a law are incompatible with the majesty of the throne, and the respect that is essentially due to the supreme head of administration. The contradiction indeed strikes us at every turn, in the systematic innovations of the constituent assembly, the strange contradiction, of wishing to annex to the royal authority the obedience of the people and the activity of government, and at the same detaching from the chief of the state all the most important interests of the nation. Our legislators have supposed that opinion would always follow
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where they led the way ; but this supposition is hasty and unfounded. Opinion of old was accustomed to obey where it felt confidence and respect, and this link being dissolved by means of our philosophical refinements, confusion and uncertainty have universally resulted.

There is another sort of magistrates, as well in France as in England, whose mode of appointment is different in the two countries : I mean those public officers whose daily business it is to attend to the preservation of good order. By our new constitution these functions are divided among justices of the peace, commissaries of police, and municipal officers ; in England they devolve on the justices only. The towns and boroughs indeed have municipal officers, but they have chiefly to superintend such parts of the police as the regulating, cleansing and lighting the streets, and the inspecting of provisions that are of indispensable necessity. Sometimes
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however, the chief municipal officer is at the same a justice of the peace, either by a commission from the monarch, or by virtue of an ancient prerogative annexed to his office.

Thus it appears that, with only a few exceptions, the magistrates of the police, are, in England, nominated by the king ; and they cannot be removed unless for misdeemeanor, or their removal be requested by either house of parliament. The commission is commonly bestowed on such persons as enjoy the fairest reputation in the counties where they reside, or who from their rank or other circumstances are most likely to command respect.

The monarch in France has no more influence in the choice of justices of the peace and commissaries of the police, than in the election of the other magistrates ; the nomination is made by the people, without the smallest interference of the king, and the elections are to be renewed every two years.

The observations I have made on the different

ferent practice of the two countries, respecting the appointment of judges, are equally applicable here. The executive power will be feebly assisted by magistrates of police in the hands of the people, and subject to so frequent changes: timidity must necessarily be the result of such a system; and experience proves the truth of this remark. It is difficult to draw the line between the use and abuse of functions of police: it is requisite to place upon the officers exercising these functions a variety of salutary restraints, and this circumstance, combined with the short tenure of their authority, will render the maintenance of order in large cities impossible; and of consequence events will perpetually render necessary a resort to means of rigour or inquisition incompatible with the principles of liberty.

Let us proceed to the nomination of juries.

The English convinced, both from experience and from reflection, of the importance
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of the executive power and the difficulties that attend the formation of it, have neglected no means of consolidating it consistent with safety. Guided by reason, or by a sort of political instinct, which frequently supplies the place of reason, they have introduced the authority of the monarch wherever its appearance was not likely to prove injurious to civil and political liberty.

The application of this principle strikes us in every part of their constitution, and is found even in the circumstances attending the formation of juries.

The citizens who are called upon to serve on what are called *grand juries* or *juries of indictment*, are, in England, appointed by the sheriff of the county, a civil officer charged with various functions and nominated by the king.

The same civil officer makes out the list of citizens who are to serve on *petty juries*, and
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of these the accused has a right to challenge as far as a certain number fixed by law.

In France, the *grand juries* (*juris d'accusation*) which consist of eight persons only, are drawn by lot from a list of thirty, which is made out by the Procureur-Syndic of *the district*, subject to the approbation of the directory ;

And the *petty juries* (*jurés de jugement*), to the number of twenty, from a list of two hundred, drawn up by the Procureur-Syndic of *the department*, subject in like manner to the approbation of the directory ; and respecting this list the accused, as in England, has the right of challenging as prescribed by the law.

It is a matter of public notoriety in England, that the juries are invariably constituted of persons most worthy of this sort of confidence ; and no discontent ever manifests itself on this subject. Thus no inconvenience results from the jury-lists being composed by a mandatory

of the monarch, and the dignity of the throne derives additional lustre from the circumstance. May the loss of that dignity in France, by the preference given to the Procureurs-Syndics of department and district, be the only disadvantage that will be felt; may no sort of partiality be the consequence; may these administrators, chosen for a time by the people, have always the same ascendancy as the royal officer in England, to determine the citizens to accept the functions of jurymen! At present however, every thing seems to indicate that the majority wish to be excused from this important mission, and we have reason to be terrified at the danger of its devolving upon men totally unworthy of the trust.

The formation of the jury lists by an officer of royal appointment, has afforded an opportunity for the application of a principle, that appears to be regarded by the English as of no trivial importance. The grand juries, whose

whose business is to determine whether a supposed delinquent, committed by a justice of peace, ought to be brought to trial, are uniformly chosen from a class of citizens distinguished for their education; but the observance of the same rule is not thought necessary in the appointment of the other sort of juries, who are definitively to pronounce whether the person, against whom the grand jury shall have found a bill, be actually guilty of the crime that has been laid to his charge.

This distinction, originating from an ancient usage in England, has not without reason been introduced. The evidence from which one has to determine the actual guilt of the accused, is derived from positive facts, or a concurrence of circumstances whose testimony is nearly equivalent; and here nothing is requisite to the discovery of the truth but probity and attention. On the contrary, in judging of the propriety of sending the accused to take his trial, one is commonly obliged to

decide from loose documents and presumptions more or less vague. It is therefore necessary, that the citizens to whom so delicate a function is confided, should possess more penetration and a more cultivated understanding than are requisite in the former instance; it is necessary that by their rank in society, they should be in possession of those general principles, which serve as a scale to measure the degrees of innocence and guilt; and all this is the more indispensable, because grand juries are obliged to proceed with a certain rapidity, that the administration of justice may be reduced within some limits of time.—It is farther observable that in England as well as in France, the petty juries are, by what is called a charge, directed by the judge; which the grand juries neither are nor ought to be, as such a proceeding would render the power of the judge too formidable. Add to this a remark still more important than all the rest, that, in neither country, is the person accused
admitted

admitted to his right of challenge in the case of the grand jury, which makes it eminently important to be very scrupulous in the nomination of it, and to employ every security for the gravity of its measures that education or rank can afford.

No such security has been thought of in France; on the contrary, to all appearance, the grand juries will be less select than the petty juries, because the latter are denominated from the whole extent of a department, and by the Procureur-Syndic of this superior administration, while the grand juries are chosen from the inhabitants of a district, and nominated by the Procureur-Syndic of this subaltern administration.

I am not unaware that it may be said, in answer to all this, that men having been declared equal by the constitution, reasons for distinction no longer exist. But the declaring men equal does not make them so; and the indestructible hierarchy of disparities of

education will ever contradict these legislative maxims.

I am led by this reflection to another, the last I shall make on the subject of the judiciary code. In England the house of peers alone is, in matters of criminal resort, the constituted judge of the delinquency of its members. I know not indeed in what language to address myself to the outrageous levellers of the present day, to those upstarts in politics, who, having made a sudden fortune in philosophical land, cannot endure, in the enthusiasm of their elevation and the imperiousness of their pedantry, to admit, though in the midst of a monarchy, a single exception.—I appeal then from these unmanageable sectarians to the reader of sound understanding, and I ask, whether it be not an incredible abuse of the metaphysical doctrine of equality, to apply its principles to the tremendous business of a criminal trial, and to enjoin, for
example,

example, a prince of the blood royal to think himself judged by his peers, when he shall be judged by men whose rank is at an immeasurable distance from his own ?

One cannot help remarking to what an extreme general principles are capable of misleading men in politics. *Men are born and continue equal in rights.* This axiom, become so familiar, would seem, at first sight, to give assurance to the accused, that all, universally, should be judged by their peers. No such thing : A second inference is drawn from the same axiom, which is that all men are peers ; and notwithstanding the contradiction in point of fact, they are held as such, are ordered mutually to judge one another ; and thus is the spirit of the trial by jury changed in one of its most essential points.

The national assembly, who have constantly made political authority to reside in the hands of many, would have done well to have applied the same republican spirit to their philo-

sophical speculations, and not have subjected such a multitude of things to the empire of a single maxim.

The unlimited application of a general principle never appears more offensive, than when legislative dispositions are deduced from it contrary to the views of universal justice. The word *peers*, thus employed in matters of criminal jurisdiction, seems intended to announce some kind of sympathy among the individuals who thus decide upon each others demerits; a sympathy which cannot consist in their mere descent from a common parent of the human race, or in the similarity of their organs and structure, but essentially depends upon a concord of habits and ideas arising from education, fortune and rank. It is this sympathy which gives to the accused a manly confidence in the recollection that he is tried by his peers, a confidence which the very institution of juries was intended to give: the very spirit therefore of the institution is
subverted

subverted, when it is subjected to a mode from which confidence is excluded, when men are appointed to decide upon the demerits of a prince of the blood royal, who are in no possible sense his peers; neither his peers in reality, nor in the general opinion of mankind, nor in their own apprehension. Thus in France, according to the new laws, not merely a prince of the blood, but a brother of the king, his royal consort, and the heir apparent to the crown, if they be suspected of any crime, are to have for their grand jury eight persons, selected by lot from a list of thirty, which list has been drawn up at the commencement of the new year by the Procureur-Syndic of a district. All this may appear very sublime, enchanting and heroical; but if once examined in cold blood, is the last refinement of absurdity; an attempt to bring us back to the solitary and uncivilized, when we are in reality in the social state; an attempt

tempt to make us view every thing as the reverse of what it is ; an attempt, visionary and aërial, to try upon mankind under given circumstances, laws fitted for mankind as they may be conceived by an idle projector, or at least as they have never existed,

CHAPTER IX.

High National Court.

THE parliament of England derives considerable importance, and of consequence an additional degree of authority, in opinion, from a privilege peculiar to the house of lords: I refer to the right of judging all state crimes, all misdemeanors, of which charges are exhibited by the house of commons.

In the place of this institution, which reflects new lustre on the legislative body; of this institution, which pacifies the feelings of a generous nation by consigning to men of perfect independence the inquiry into deeds of which she undertakes the prosecution; of this institution, so admirable in every point of view, there has been substituted in France
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a high national court, a whimsical and complicated idea, and of which I shall endeavour to point out the principal defects.

Electors, chosen by the people, are to nominate, in each department, two jurymen, whose business is to examine the reality of any crime, denounced by the national assembly as a crime against the state.

These jurymen, estimating two for every department, will form for the whole kingdom a panel of one hundred and sixty six.

From this number, at the time of forming the high national court, twenty-four are to be taken by lot, who, unless challenged by the accused, are to constitute the jury of trial.

The right of challenging extends as far as forty, drawn successively by lot from the whole panel; but it cannot be carried farther without the prisoner submitting his reasons to the examination and decision of the high judges of the court.

These judges consist of four, chosen in like
manner

manner by lot from the magistrates of the tribunal of annulment.

The national assembly nominates two of its members who, by the appellation of great procurators of the nation, are to manage the prosecution.

Let us now take a view of this strange assemblage of circumstances.

And in the first place, what is it we behold in the room of that stable and majestic tribunal, which in England takes cognizance of such crimes, shelters under the wing of its reputation the weak and the powerful, and secures impartial justice to the nation? We behold a number of jurymen, every where unknown but within the limits of their respective districts, and who, the instant any impeachment has been voted by the legislature, must put themselves in motion from every extremity of the kingdom, and descend, two and two, from the mountains of Auvergne, the Alps and the Pyrenees, to hasten, terror
their

their harbinger, to the tribunal of Orleans, where sentence is to be pronounced by them; this being done, they are to return again to their habitations, after having seen, perhaps, the blood of the victim poured out.

No institution, productive of so continual a ferment, could be deserving of the smallest estimation, though in every other respect it should be perfect: but the one we are considering is sullied with a flagrant principle of injustice. It submits the most important of decisions, that of the life or death of a human being, to a jury, collected from every quarter of a kingdom twenty-five thousand squares leagues in extent, and whose names and reputation, it is probable, will be totally unknown to the unfortunate object of their judgment. Besides, transported all of a sudden from their distant abodes to the town in which the prisoner is confined, and where he may himself never before have resided for a day, they can have no ready mode of obtaining information

mation as to his manners, character, and former habits of life. Yet so congenial, so essential are these conditions to the spirit of the trial by jury, that, in England, injunctions are laid on the sheriff to make choice, as far as lies in his power, of such persons for jurymen, whose residence is at a small distance only from the place where the crime has been committed : and, consistently with the same principle, when it is a foreigner who is arraigned, the generous care is taken to add to the usual jury a certain number of his countrymen. This moral nation, whose indulgence consists in actions, not in words, has gone even farther. Conceiving that the right of challenging ought to have every assistance afforded it, and reflecting that nature stamps sometimes on the physiognomy of men the levity or harshness of their dispositions, the jurymen, in an English tribunal, are made to appear personally before the prisoner, who, taking a view of each as they are named, is

allowed a sufficient interval to exercise that right, as far as the limits fixed by the law. We, on the contrary, present to the unhappy being, arraigned for a capital crime, an uninteresting and inanimate list of jurymen, composed of persons collected from all parts of the kingdom, and whose reputation can be known neither to himself, nor his friends, nor his counsel, without an intercourse and correspondence with every district in France. In this state of things, the privilege of challenging is little better than imaginary. Meanwhile, if it has always been regarded as an essential condition, as a right inseparable from this form of trial, with how much greater force will not the principle apply to times when political divisions engender all sorts of prejudices and distrusts?

I stop for an instant, and I enquire, why the English, prejudiced as they are in favour of trial by jury, have not admitted this form of trial in instances of crimes against the state; and it is with pleasure that I

feel myself prompted to refer this decision to a great and just sentiment. I believe that penetrated with the conception of a charge advanced against a single individual in the name of the whole nation, and generously anxious respecting the immediate event of so unequal a contest, they have resolved to stand acquitted to their honour and their conscience by means of a peculiar solemnity given to the trial. Feeling in this manner, they were willing that so serious an authority should devolve, not upon jurymen, those ephemeron beings emerging one moment from obscurity to return to it the next, assembled for a short space of time and then scattered over the face of the kingdom; but upon a permanent body of men, of long established reputation, and presenting in every point of view a durable responsibility. I may be mistaken; but if the English have not been influenced directly by reasonings like these, it is to a secret sentiment, equal and frequently

superior to reasoning, that they must have yielded: for there is an instinct of great ideas and of great things, which never fails to act upon human beings, taken in the mass, when they are not misled by the spirit of singularity or the vague excursions of metaphysics.

To proceed—The four grand judges who are to direct the proceedings, in the high national court, and apply to the decision of the jury the punishment decreed by the law, are to be chosen, by lot, from the magistrates forming the tribunal of annulment. These men also will be very little known, since the members of the tribunal of annulment are elected by the different departments, are renewable every four years, and the lot may happen fall on the most ignorant and obscure. Besides, the private reputation of a judge is not in this case sufficient; it ought to be a public, it ought to be a universal reputation, if I may so express myself, to satisfy a nation,

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when that nation is made the prosecutor of a single individual.

Let us next direct our regard to the two deputies of the legislature, who, under the title of great procurators of the nation, are to manage the prosecution. From the very nature of their office they will have a concern in all the proceedings of the trial; will represent, before twenty-four jurymen and four judges, the most powerful body of the state; and will at least suggest by their presence, that the seven hundred and forty-five deputies, in the name of whom they act, have their characters at stake in not having voted lightly a capital indictment. What a want of equilibrium, what an alarming disproportion presents itself in an institution like this! And yet the life of a human being, of many human beings depends on it.

The English house of commons delegates in like manner certain of its members to substantiate and manage its impeachments before

the lords ; and it is from hence we have derived our idea of great procurators ; we have only changed the name, a rule we observe invariably whenever we copy. But how could we avoid being struck with the difference between the circumstances, a difference sufficient to transform a wise regulation into a species of oppression ? In the appointment of managers by the house of commons, we find nothing overbearing or severe, because the accusation is brought before the court of peers, before a tribunal, that, as is well known, will not be awed by the circumstance of the commons being the prosecutors, and will preserve the most perfect independence of opinion. But the commons of England would be ashamed to proceed by a committee of managers, in a court of twenty-four jurymen, whose reputations are in a state of embryo, whose characters are wholly unknown, and who, leaving out of the question all considerations of respect, and taking only the

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the circumstance of numbers into account, would be in a state of manifest inferiority, when contrasted with the principal section of the legislative body. What would Englishmen say, were it only to be proposed that the grand juries, appointed to determine indictments in common criminal matters, should nominate deputies to act in their name and sit in court by the side of the petty juries? The idea would excite a general outcry and reprobation; and yet, between these two descriptions of citizens, there is no other difference than a slight superiority of condition on the part of those who form the grand juries. We have given to an assembly, forming the whole legislative body, the right of appointing procurators before twenty-four persons chosen by lot to officiate as petty jurymen. Behold the result of our sublime science, see what in our wisdom we have devised! we have borrowed from our neighbours a form, and have left its moral spirit behind; a spirit that has

constantly been neglected by us, because in its various applications it admitted of no distinct name, because it presented no palpable figure, and because, furnished as we have been with geometrical instruments only, it was not to be found within the circle of our calculations. We have systematically rejected and suppressed those impulses of the soul, which attain to all ideas, and have never in a single instance given way to that sensibility that modifies the reasonings of the mind, applies them to our common nature, renders us good, indulgent and generous, and teaches us far better than speculations, the secret of social union.

Ah ! should the reflections presented in this chapter be read by you, utter strangers to me, who from all corners of the kingdom will be called to the high national court ; you who will determine the fate of the unfortunate beings shut up in the prisons of Orleans, reflect that you are going to sit in judgment on your fellow citizens without their consent,

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since they will be ignorant whether they ought or ought not to reject you in the exercise of their right of challenging; reflect also that you will have before your eyes the procurators of the legislative body, of that body at present the only existing power in the state, and whose reputation is intimately allied to the severity of your decisions. Let the consciousness of the important duties you have to discharge animate you, and make yourselves the protectors and support of the unreflecting and unfortunate. Let your soul rise to the level of your functions, and your understandings take a rapid survey of their difficulties. Have the eyes of an Argus for the discovery of innocence, and the kindness of a God to direct their employment. Above all lend no ear to the spirit of party; give no quarter to the whispers of headlong passions: they, and the colours in which they are attired, will prove evanescent, and you will be left alone with God and your consciences. Anti-

cipate that moment, and consider nothing as certain, but that opinion which a just and candid estimate may dictate, which is founded upon the basis of universal morality, and which the present generation, spite of all its efforts will never be able to eradicate.

But it is not to these general principles only that I would direct the attention of the judges and juries of Orleans ; I dare invite them also to reflect, that, in the infancy of a revolution, severity would border upon injustice. It is necessary men should have time to acknowledge the new power that is set up ; it is necessary they should have time to enlighten their consciences and divest themselves of their former opinions. Besides, when the revolution has oppressed, in every possible manner, a certain class of citizens ; when it has stripped them of their names, their rank and their fortune ; when it has afterwards given them up to the discretion of a disorderly multitude whom no laws could restrain, a
multitude

multitude that has refused to pay them the little that remained of their ancient rights, that has burnt their habitations, ravaged their fields, and committed the most horrible outrages towards their persons and their families,—the attempt to throw upon them all the burthen and heat of the day, the wish to render them the victims at once of oppressions which have driven them to despair, and of a vengeance annexed to the efforts of that despair, is the consummation of tyranny. In fine, and this procedure is absolutely inexplicable, the species of crime reserved for the investigation of the tribunal of Orleans is altogether without explanation or limit. Having copied the Americans in so many things, we ought to have imitated them in the generous care they have taken accurately to define what are to be regarded as treasonable offences; and the following are the words of their constitutional article upon this subject.

“Treason

“Treason against the United States shall
 “consist only in levying making war against
 “them, or in adhering to their enemies,
 “giving them aid and comfort.”

Such are the limits which a mild and virtuous people, at the moment too of their emerging from the horrors of civil war, have thought proper to fix to the most dreadful species of accusation, and the most capable of vague interpretations. Ah ! they no doubt, still under the influence of the first principles of morality, regarded as a public calamity the effusion of a citizen's blood. They were strangers to the sentiment that hunts after crimes ; they particularly had not learned the ferocious idea of maintaining a government by the axe of the executioner ; they relied upon the attractions of a general interest, and after making their country the asylum of peace and of the virtues most endearing to human beings, they probably felt compassion rather

than hatred, for those who still continued their enemies. Is it possible to compare ideas and sentiments like these with the declarations and conduct of many of our legislators, without shrinking with horror from the contrast. It is in severity, in punishment and vengeance that they have placed their confidence. They have contrived that from the tenour of the constitution party should arise, and at the same time they punish the effects of party with insatiable rigour. Alas! if amidst the extensive harmony of the universe, if amidst the solemn scheme of divine administration, we place benignity and mercy as a refuge for the frailties of mankind, what indulgence do we not owe to the political transactions of men, where every thing is in tumult, and universal chaos and confusion have not yet subsided! I am indeed unable to pronounce whether, at this tremendous moment, the treasons of individuals are to be considered as appropriated

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to the men who commit them, and whether the blood of those victims, whom the law may have condemned, will not fix an indelible stigma on that system of government, from which so many errors have flowed and so many calamities originated.

CHAPTER X.

Prerogative of Mercy.

THE spirit of philosophy, that spirit, which, by asserting the rights of humanity, has attracted so great attention, is so disfigured by its usurpers, that they have proposed the abolition of the right of pardoning as a reasonable and becoming measure. This abolition has not been formally pronounced ; they have contented themselves, as yet, with suspending the right : an expedient manifested invented with a view of burying in oblivion what a sort of shame would not suffer them openly to reject. Meanwhile from the reign of the national assembly the monarch has found himself divested of the most august of his prerogatives. All condemnations, all capital sentences,

sentences, whether more or less severe, have been immediately carried into execution, and the word clemency has been blotted from our language. Its place was doubtless wanted for the many barbarous names that our new manners have introduced. Noble exchange, admirably calculated to distinguish the present epocha of our history ! It will certainly entitle us to the merit of originality, since there is not another people on the globe with whom the right of pardon is not established.

It has been said, that criminal justice in future being to be administered by juries, errors and partialities would by such a form of trial be excluded ; and that therefore the reason would no longer exist for wishing the power to reside in any branch of the constitution, of mitigating the sentence of a tribunal.

At the moment that I write these reflections, juries are as yet not established ; and I cannot but express my astonishment that, during the existence of a jurisprudence, acknowledged by
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the assembly itself to be defective, the suspension of the privilege of pardoning has been so rigorously observed. Are we certain that no instance has occurred during the interval in which its application would have been just? And has the christian morality never reminded us that, in the calculations of mercy, a human being, a single human being, is a great and invaluable number?

But I would examine whether the trial by jury really supersedes the necessity of resorting in any case to pardon. England and America have thought otherwise, for with them the prerogative exists in its plentitude, and yet they adopted, long before our legislators, the institution of juries. But examples, however unexceptionable, will have little influence on men who have taken their post in the very centre of theory: I shall therefore attack them with the weapons of argument only; and I venture to affirm that the prerogative of mercy, in countries where the trial by jury

is introduced, is, on various accounts, particularly requisite.

For, in the first place, such a form of trial admits of no modification. On one side are the jury, who have simply to enquire, and decide whether the crime found in the indictment has been committed voluntarily by the person accused of it ; and on the other side is the judge, who opens the volume of the law, and pronounces the penalty decreed therein. Between these judiciary acts there is no place for the spirit of moderation, which other tribunals, judges at once of the fact and the punishment, are frequently led to exercise.

We may add, that from the partition, as it were, of the business between the jury and the judge, the edge of that repugnance, so natural in human beings to all acts of severity, is blunted. The jury, judges merely of the fact, have not before their eyes the punishment due to the crime ; and the magistrate, who comes after them, considers himself simply as the
organ

organ of the law bound to deliver its commands.

And what is the country where the abolition of the prerogative of mercy ought to excite the least regret ? It would be a republic, pervaded by a sort of kindred spirit and moral feeling, circumstances which throw a shade of mildness and forbearance over all acts of authority. It would be a republic where the tribunals, judges at once both of the fact and the penalty, would have the power of combining with the nature of the offence, the degree of uncertainty that often remains, however forcible be the evidence ; the circumstances that may be alleged in its extenuation ; the preceding character of the delinquent ; together with, what cannot and ought not to be omitted, the public services which may have been rendered by his family and perhaps by the individual himself. These are considerations that enter into the opinion of the judge, in the tribunal we are supposing, and

which lead him, in the exercise of his authority, to mix with the principles of severity a spirit of indulgence, and to soften, by natural equity, the rigid justice of the law.

In the mean time republics, in which, as I have intimated, a government of confidence is established, and many such republics there are, have been uniformly of opinion that the deviations from the law would be safer in the hands of a body superior to the judiciary tribunals; and to such a body has the prerogative of mercy been entrusted by them. It is then in France, and in France alone, that this prerogative no longer subsists; and yet how many circumstances are there, of which I have made no mention, that would render it more necessary there than in any other part of the globe? It is in the midst of a people whose language is that of menace, of a people aware of its force, agitated by the violence of passion, and given up implicitly to every designing guide, of a people who have so frequently

quently shewn themselves sanguinary and terrible, that the juries and judges will exercise their functions and pronounce their decisions. It is farther in the midst of a people, who have assumed to themselves the dispositions of all favours, that the judges and juries are required to maintain their independence ; and it is in the contemplation of all these seductions that the sentence of the law is to be immediately followed with its execution. The idea is terrible.

Let the reader recollect also in this place, what I have said upon the judiciary institutions and the high national court. The first princes of the blood may be accused and thrown into prison, upon the decision of eight jurymen, by a fiction of law declared to be their peers, and selected by lot from a list of thirty drawn up by the Procureur-Syndic of a district. In the high national court, all persons, denounced as criminals against the state, are to be tried by individuals whom they

know not and by whom they are unknown, and have to plead against the managers and conductors who shall be appointed to prosecute the accusation in the name of the first body in the state. In fine, it is at a moment when the spirit of party carries every thing before it, when the attention of the multitude is directed to one object only, and one single imputation concentrates every species of reproach and obloquy, when the slightest word can spread contagion and effervescence through the community; it is at such a moment that they have dared to confide in a justice so sure, impartial and intrepid, as to authorise the abolition of the prerogative of mercy. I cannot tell what other men feel, but for myself, at a juncture like this, the idea of an absolute and final decision, with no room for appeal or for hope, suggests itself to my mind under the most tremendous colours.

I go farther, and I ask, whether we can in delicacy take upon ourselves the functions of
a judge

a judge or a juryman in a country where the right of pardon is abolished? Shall I declare that such an one ought to be brought to criminal judgment, ought to be accused of a capital crime, when my voice is to inflict death, and when I shall perhaps feel in my breast a sentiment of commiseration and of equity that would lead me to desire his forgiveness. Why should I consent to be the instrument of a law that has no appeal to mercy? Why should I degrade myself to this miserable condition? The juries and judges of France ought with one voice to demand the re-establishment of the prerogative of mercy; morality dictates it, honour requires it of them. They conceive that they acquire new importance from the irrevocableness of their judgments, and they are deceived. Vanity leads them to regard a will executed without appeal, as a circumstance peculiarly honourable; it is not so: neither juries nor judges have a will of their own; the former decide

upon the truth of the allegation, the latter declare the sentence of the law. These functions are merely ministerial, and carry with them no stamp of sovereignty; and it is of the utmost consequence to the character both of juries and judges that the prerogative of mercy, by being revived, should draw a line and fix an interval between the solemnity of conviction and the sanguinariness of execution.

The king of England not only enjoys the right of pardoning in its fullest extent, but his signature is also necessary to carry criminal sentences into execution. Be it observed however, on the other hand, that the judges of England, returned to London after their circuits, are at hand to instruct the monarch as to the circumstances of each particular offence. The French constitution having established a criminal system of a very different sort, and the tribunals in the various parts of the kingdom being resident, the information to be conveyed to the supreme govern-

ment, respecting the due application of the royal clemency, must be precarious and uncertain. This circumstance, combined with the extent of the empire, would naturally have subjected the exercise of the right of pardon to certain modifications ; nor would these modifications have diminished in any degree the power of the monarch, which upon the ancient system had been limited, not by express law, but by the nature of things. It had been customary for the courts to cause their sentences to be executed without delay ; from whence it resulted that there was no where time, except in the dependence of the parliament, which was indeed very extensive, to apply to the royal clemency. The king had recently formed a project for suspending, through the whole extent of the kingdom, the celerity of executions, and his intentions upon the subject had been solemnly declared. But decide as you will upon the propriety of this measure, there is surely a wide distance

between modification and limitation on the one hand, and the rash and absolute abolition of the prerogative of mercy on the other, the excluding the king from the exertion of his most august and inestimable function, the sacred patrimony of his ancestors. Alas ! we surely have not yet acquired a right of detaching from our countrymen in general their sanctuary in the clemency of the monarch ! Were our security, as to the dispassionate administration of criminal justice, much greater than it is, we yet should not have acquired this right ; but at the moment of convulsion and danger, it is in the utmost degree barbarous to take from us a hope of equitable construction and unlimited protection that may overstep the bounds of severity. The nature of man makes this indulgence necessary, and no legislature can justly extort from us the sacrifice of immutable and eternal nature. But such has been the result, such is the favourite boast of that cold and logical system, which
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has banished from the midst of us the empire of sentiment, and of all those grand and simple ideas which follow in its train. Thus is the chain of virtue, which reached from heaven to earth and united us to the great Supreme, broken and dissolved. With one stroke of the pen we have obliterated our most precious resemblance to his divine perfections. Never had we so much need as now to believe in a merciful and benevolent Governor of all things ; and it is now that we have resolved neither to be benevolent nor merciful. Unfeeling guides, pitiless instructors, whither would you lead us ? You present to our view the scattered and tremendous remnants of our ferocity ; the blood stained fragments, that promise as it were to hide the soil of our country under their odious veil ; and having thus struck despair into our bosoms, you go on to deprive us of the vain hope of a protector and a friend. You tell us that we have nothing more to expect or
look

look for in heaven or earth ; you assure us in confidence that the great machine of the universe is the produce of chance, and that in this lottery the most envied prize we can draw is in your adamant heart and your bowels void of compassion ; that of consequence it is our best wisdom to intrust ourselves to your guidance, and to become unfeeling like you. Ah ! let me alone ; I would much rather encounter all the tigers of the desert ; my soul is formed for other thoughts ; my soul come not thou into their assemblies ; any prospect, that which arises from the very recollection of our limitedness and our imbecility, gives more cheerfulness to my heart, than is to be derived from your arrogant maxims. I hasten to a society more accordant to my feelings ; to you, mild and timid spirits, I dedicate myself ; and in the midst of these sad recollections, I will present to you a kind and cheering ray, in the record of one of the most ancient usages of that wise and virtuous nation,

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tion, from which I am perpetually obliged to borrow my examples. The fact is deeply engraven in my memory and suggests to me at this moment inexpressible comfort. It has been contrived that the first intimations addressed to the king of England upon his accession to the throne, and the first engagements into which he enters, are calculated to impress his duties and his rights of clemency and mercy. The following is one of the questions addressed to him at his coronation by the archbishop who officiates on that solemn occasion ; and to each of which the king answers, this I promise to do.

“ Will you to your power cause law and justice, in mercy, to be executed in all your judgments ? ”

How beautiful, how touching is this question ! after having called upon the monarch to promise that he will cause law and justice to be executed, then follows the words, the inestimable words, *in mercy*. Words like these

give

give us as it were at one stroke the character of a nation. Yes, nothing is more emergent than to place somewhere this sacred deposit, the prerogative of pardon and pity. The honour of our legislation demands it, the reputation of our manners prescribes it : justice is not more a debt that we owe to the political institution of society, than mercy is a debt we owe to our common nature.

CHAPTER XI.

Formation of Ministry.

IN the parallel I have undertaken to draw, there is no point more deserving of notice than the mode of constituting the ministry in the two kingdoms, whether we consider the circumstance in itself or as connected with the executive power.

In England the ministers are almost always members of parliament. Some have a seat in the upper house by right of inheritance, others in the lower house by the suffrages of the people. The assistance of certain of them in parliamentary deliberations is deemed so essential, that were the person at the head of the finance, for example, not elected to the house of commons, the king would be under the necessity
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of making another choice. No man in England thinks it possible to conceive of the proceedings of the legislative body as founded in sufficient information, or judiciously adapted to the situation of affairs, without the perpetual intervention of the principal members of government. Accordingly, in the house of commons, the proposition of measures to be adopted upon subjects of finance, is ordinarily left to the minister for that department, not in his quality of minister of the king, but as being the member of parliament best qualified by his functions to know what the circumstances and interest of the kingdom require.

It is idle to suppose, that the separation between the legislative and the executive powers is infringed by the circumstance of one or more of the ministers sitting and voting in the house of commons; since they sit there only as elected by the people; and it is a constitutional statute of England never to pronounce

the name of the king in the discussion of parliamentary topics.

There are nevertheless various benefits that result from the power possessed by ministers of sitting in parliament, and from their uniting in their persons the two important qualifications of servants of the executive government and members of the legislative body. It is this that gives permanence to their consideration; and as they could not effectually serve the public, nor even maintain themselves in their places, if they did not discover talents, virtues and information, the monarch is obliged to chuse them from among the most distinguished of his subjects.

But I am asked, if the union of all these circumstances be not calculated to create too powerful an influence, and if that influence, in the hands of the principal agents of the royal authority, may not endanger the constitution. The objection I conceive to be futile, and the danger imaginary, since the
people,

people, though warmly attached to their government, feel no such apprehension, and since, for the period of a century, the principles of liberty, civil as well as political, have been inviolately maintained. It is not to individuals that the care of these principles is entrusted; their most faithful guardian is the general happiness. Political vigilance is an inexhaustible task, if we persuade ourselves to consider every thing with suspicion; and when we have done, we do but resemble those jealous husbands, who, amidst all their precautions, forget that which is most essential, the precaution of making themselves beloved.

If another objection be started and it be said, on general principles, that the presence of ministers in parliament attaches too great a degree of importance to their opinions, I shall not contest the point, but shall content myself with observing, that, in all affairs of administration, the ascendancy of the heads of go-

vernment is necessary to the good of the state, serving as a counterpoise to the spirit of party, and to that prevailing desire in man to raise himself a reputation, at whatever price it may be. Persons who constantly pursue a celebrity like this, have perhaps a passion more hostile to the public welfare than those who thirst after emolument; for the least applause may corrupt them, the most trifling sacrifice to their vanity tempt them to deviate from the line of rectitude, and be guilty of a dereliction of all their principles and opinions.

It is indeed sufficiently probable, that, of the different inhabitants of the state, those who join to the quality of representative of the people, the information gained by the administration of public affairs, are best deserving to be heard; but they, like any other members of the house of commons, would lose their influence, if they set at defiance the voice of truth and reason, and if they brought the purity of their intentions into question.

Nothing less is necessary than the perpetual presence of ministers in parliament, their capacity of representatives, and their personal merits, to the creation of that perfect and harmonious sympathy between the executive and the legislative government, which is indispensable to the health of the state. If once this sympathy be annihilated, if once mistrust and suspicion assume its place, all would be contest and confusion; and speedily it would be found, that anarchy is the most dreadful of all evils to a free but immature constitution.

Let us compare with these reflections and instructions, afforded us by the example of a great nation, the situation of the ministers of France relatively to the legislative body, and we shall perceive its manifest inferiority. They cannot be elected as deputies to the representative assembly of the nation, and have no right to appear at the sittings, except within a place appropriated for them in the hall. But there they act only a subaltern part in political concerns,

concerns, and dare not take share in any discussion not immediately connected with their office, at least till the assembly shall, by a formal deliberation, *grant them liberty to speak**. A single glance is sufficient to show us how different is the case with the English ministers. They are not subjected to the previous question of the house of commons; they have no favour to obtain before they can be permitted to speak, for liberty of speech is one of the qualities attached to them as representatives of the people, or as members of the upper house if they be peers of the realm. Far from being considered in either house as inferiors, whom with the waving of a wand you are to silence or cause to speak, it is ordi-

* “ The ministers of the king shall be heard whenever they demand it on objects relating to their administration, and when they shall be required to give information.—They shall also be heard on objects foreign to their administration, when the national assembly shall grant them liberty to speak.”——
Chap. III. Sect. iv. Art. x. of the constitution.

narily from them that is expected the opening of all questions in any new occurrence ; or the first observations upon such propositions as may be made by other members of the legislature. The concurrence of the executive government with the legislative, consists much less in the constitutional necessity, that the monarch should execute the acts of his parliament, than in the previous intervention of ministers in the deliberations in which these acts are founded.

This intervention, which leads to an habitual discussion between the ministers and the other members of parliament, is a powerful security against the employment of the royal negative upon the different decisions of the legislative body ; an employment which must always produce a great effect, and may easily be made a source of disunion between the two powers. In fine, the ministers of England, either being themselves the authors of the laws which are passed, or entering early
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into the discussion of such as are introduced by other members, have a concern in the modelling of all parliamentary bills, and of consequence render the deliberation of the monarch, when these bills, after having been approved by the two houses, are presented to him for his assent, exceedingly simple. But in France, where all the provisions of a law are adopted without the concurrence of ministers, the exercise of the right of sanction is attended with peculiar difficulties. How is the king to act if, in a decree composed of a considerable number of articles, some should appear to be good and others to be dangerous? The constitution obliges him to accept or refuse the whole, and that without making any observations. Shall he then sanction the articles he disapproves, in consideration of those which he deems useful? Or shall he refuse the whole to get rid of those he dislikes? This is a state of embarrassment in which he will frequently be found; and this embarrassment,

prejudicial to the interests of the state, is a natural consequence of the separation between the legislative body and the heads of administration ; a separation that does not exist in England, that does not exist in the federative constitution of America, and which we alone have confounded with the wise principle of the separation of powers.

It will be asked, if the responsibility of English ministers be not weakened by the circumstance of their being members of parliament ? I answer, certainly not. The commons have full power to vote an impeachment against them whenever they shall have been guilty of any crime. They can also show their resentment in another way, by declaring the ministers to have lost the confidence of the house, or by opposing and defeating the measures that may be introduced by them. They are not indeed eager to contrive, as in France, the means of rendering them the subject of a criminal prosecution ; they are
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not upon the watch to discover their slightest negligences and their smallest mistakes. It would indeed be impossible for them to sit in parliament, if such were the spirit of the legislative body; for if my life be the stake for which I play in every petty omission, how can I ever venture for a moment to leave my office?

Such however in France is the situation to which ministers are reduced. The moment no doubt approaches, when it will no longer be thought valiant to treat them with every possible rudeness, though enough of this propensity will I fear remain to render their condition incompatible with the high degree of consideration necessary to the first agents of the executive power. English ministers are in like manner liable to be attacked in parliament; but then they are treated on a footing of equality, not with arrogance and ill manners: their opinions are combated, or their principles arraigned, but the detail of an executive

measure is never made the subject of criticism. We ought also to observe, that, in contests of this nature, the minister is always addressed by the appellation of *the honourable member*, as if his quality of representative only was taken into account, and that of being the king's minister disappeared from the scene.

There is no nation so zealous in the defence of its political interests, and that preserves at the same time so much respect for the chief magistrate and so great consideration for government, as the English nation. This is chiefly to be attributed to the judicious gradation of the different powers, and the harmony that exists between public opinion and the order established by the constitution. Nothing similar to this can be expected on the part of an assembly, hastily invested with an unlimited power, and the exercise of which is confided to men, the majority of whom are not even restrained by the stake of property, or by an habitual regard for honour and public

opinion. There exists indeed a constitution, but it is only in writing, and its precise configuration is imprinted on the mind of not a single individual ; there exists a constitution, but it has placed enmity between the powers even before they were created ; and in this warfare of political elements, nothing is distinguishable but the overweening ideas of liberty and equality, those undisciplined principles which every man pursues according to his humour and interprets in what manner he likes best. Amidst this general relaxation, there was one, and one only spring, that could have held the principal parts of administration together, and that, like so many others, has been broken : to preserve this spring it was necessary to give a degree of consequence to the immediate agents of the executive power ; it was necessary to unite them to the new system of government otherwise than as men against whom the declamations of patriotism and every species of menace were to be directed.

rected. They would have served for central points towards which the public mind might gravitate, in the midst of the universal dissolution of force which was in other respects introduced ; nor could any fear be conceived of their formidableness, in competition with a mass of national opinion more redoubtable in its commencements than the legions of ancient Rome : but every thing was feared except anarchy, and this womanly timidity is the distinctive mark of the subaltern and short sighted character of our legislators. They regarded the necessary agents of every department of the state, in no other light than as the ministers of royalty, and they felt more pleasure in waging war against them, than admitting them to an honourable participation of their labours. They imagined the separation of powers to consist in the separation of persons : whereas by placing the oppressors on one side and the oppressed on the other, they adopted the surest means of reducing all

authorities to one. Thus the degraded situation of ministers contributed, more than any other circumstance, to the absorption of all power in the national assembly; an absorption not only prejudicial to liberty, but, which they were incapable of perceiving, dangerous to the credit and ascendancy of the legislative body itself. At first sight it may appear as if an increase of its power would produce an augmentation of its consequence; but if this increase of power makes it necessary for a representative assembly to be incessantly in action, it must lose, by attending to details foreign to its functions, the degree of consideration of which it stands in need for general acts of legislation; or at any rate its reputation will incur a greater number of risks. It may also diminish its credit in another way, when it assumes to itself the exercise of what belongs to the executive power, since it thereby becomes accessible to all sorts of passions. To resume, at its pleasure, the character of moderation,

moderation, so indispensable in a legislator, will then be found impracticable : it will have to contend with our weaknesses, and will be unable to interfere with dignity and effect in prescribing and directing our duties : it will have quitted its central post, and our respect will no longer be stationary : it may seem to have enlarged its power, but its ascendancy will in reality be inferior to what it was before.

I am treating then of a subject of the utmost importance, when I call the attention of the reader to the different manner of constructing the ministry in France and in England. The question is intimately connected with the first principles of public order ; and in every point of view it is found that the constituent assembly, by proposing a separation of authorities, and by endeavouring to divide them between the legislative and executive branches of the state, has neglected to appropriate to the one the necessary degree of consequence to preserve

serve it from the invasion of the other ; a precaution that ought to have been constantly present to their minds ; for the apportionment of forces, that combination, which, though all ages of the world has regulated the action of the elements, is equally indispensable in the conduct of political transactions ; this well known law of nature is also, in my apprehension, one of the constitutional statutes of true policy, and of all others the most immutable.

CHAPTER XII.

Distribution of Favours, and nomination to Employments.

A MAN who, like myself, has been some years placed in the centre of public affairs, who has been, so to express myself, one of the axes round which the motions of personal interest perform their circuit, is best able to judge from his own experience of the activity of those interests, and to perceive in what manner the human heart is influenced, irritated and soothed by hope. Full often are the thoughts of men employed upon their own personal views, when they affect most carelessly to neglect or most generously to sacrifice them. I grant that individuals have for their days of parade a
pompous

pompous and wonder-working language ; but I affirm, that, in their daily habits and in their secret confessions, we find them always occupied either with the fortune they are pursuing or the eminence to which they aspire. It must not therefore be doubted that the more we narrow the circle of encouragements and rewards which the monarch can bestow, the more shall we enfeeble in his hands the action of the executive power.

In the constitutional charter the functions of this power are brought under one head, and as these functions present us with a view at the same time of its prerogatives, it was doubtless intended, by uniting and collecting them together, to give them a consequential appearance : but illusions of this nature deceive only the ignorant and the superficial. The number of prerogatives is indeed great, but the value of the different articles is sufficiently understood.

I beg

I beg leave to examine this ridiculous chapter of ostentation *. And the first thing I behold

* CHAPTER IV.

Of the Exercise of the Executive Power.

I. The supreme executive power is lodged exclusively in the hands of the king.

The king is the supreme head of the general administration of the kingdom : the care of watching over the maintenance of public order and tranquillity is intrusted to him.

The king is the supreme head of the army and of the navy.

To the king is delegated the care of watching over the exterior security of the kingdom, and of maintaining its rights and possessions.

II. The king appoints ambassadors and the other agents of political negotiations.

He confers the command of armies and fleets, and the ranks of marshal of France and admiral.

He names two thirds of the rear-admirals, and one half of the lieutenant-generals, camp marshals, captains of ships, and colonels of the national gendarmerie.

He names a third of the colonels and lieutenant-colonels, and a sixth of the lieutenants of ships.—The whole in uniformity to the laws respecting promotion.

He appoints in the civil administration of the marine, the directors, the comptrollers, the treasurers of
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behold is the usual repetition of the terms *supreme* executive power, *supreme* head of administration, *supreme* head of the army, *supreme* head of the navy; but all these *supremes* only represent to me a gaudy canopy without pillars to support it. To command, to watch over, to superintend, are words devoid of meaning when unaccompanied with

the arsenals, the masters of the works, the under masters of civil buildings, half of the masters of administration, and of the under-masters of construction.

He appoints the commissioners of the tribunals.

He appoints the chief superintendants of the administration of indirect contributions, and the administration of national domains.

He superintends the coinage of money, and appoints the officers entrusted with this superintendance in the general commission and in the mints.

The effigy of the king shall be struck on all the coinage of the kingdom.

III. The king has the issuing letters patent, brevets and commissions to such public functionaries as are entitled to receive them.

IV. The king orders the list of pensions and gratifications to be made out, in order to be presented to the legislative body each session, that it may be decreed, if thought proper.

the means necessary to inspire respect and obedience.

We behold also in this constitutional collection, a collection drawn up with no small degree of art, that the power of the monarch is composed of such prerogatives only as had escaped the reforming hands of the different committees. No nomination is left to the king that could be executed by the people, or regulated by rules of promotion. But to extend in appearance the exercise of the executive power, there is inserted in the list, and in a distinct head by itself, the liberty granted to him of *issuing letters patent, brevets, and commissions, to such public functionaries as are entitled to receive them*: thus reminding the monarch of the humiliating necessity to which they have reduced him of confirming, with his seal or by some other formality, that multitude of appointments and promotions in which he has been prohibited every sort of interference.

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The last article of these gaudy trappings, in which the executive power has been arrayed, is equally curious. *The king orders the list of pensions and gratifications to be made out in order to be presented to the legislative body each session, that it may be decreed, if thought proper.* Thus is it consecrated by a constitutional law, destined to remain for ages, that the king, this *supreme* head of administration, this *supreme* head of the army, this *supreme* head of the navy, shall not have the power of bestowing a recompence of a hundred crowns, without the formal consent of the legislative assembly.

But I am anticipating the general picture I mean to draw, that shall exhibit at one view a parallel between the prerogatives conferred on the French monarch and those enjoyed by the king of England. This parallel, I conceive, may be useful; and it is naturally connected with the subject of which I am treating.

CHURCH DIGNITIES.

The king of England in the mandates, or *congés d'élire*, which he addresses to the chapters, points out of them, in cases of vacancy, the individuals whom they are to elect as prelates, and the chapters are obliged to conform themselves to the injunction. It may with truth therefore be said, that he has the actual nomination to the first dignities in the church. The majority of prebendaries and canons are also in his appointment, beside that he has the disposal of a considerable number of livings.

There are no longer either prebendaries or canons in the Gallican church, and the bishops and rectors are elected by the votes of the people.

PEERS OF THE REALM.

The peers of the realm in England are of royal investiture, and in proportion as these
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hereditary titles become extinct in certain families, or the king is desirous of augmenting their number, the advancement to these high national honours forms an essential part of his prerogatives.

In France there are neither peers of the realm nor any distinctions of this nature.

JUDGES CIVIL AND CRIMINAL.

The twelve judges of England are chosen by the king : he nominates also the president in each tribunal, as well as the person who fills the office of attorney general*.

In France all the judges are elected by the people, who also chuse the public accuser.

The president of each tribunal is elected by the members of that tribunal.

* The municipal officers of cities have in general, in England and in France, a trifling jurisdiction, and are in both kingdoms chosen by the people.

JURIES.

The grand juries in England are appointed by an officer of the crown.

The lists of petty juries, respecting whom the accused is allowed the right of challenge, are composed also by the same officer, whose title is that of sheriff.

In France the Procureur-Syndic of the district draws up the grand jury list, and the Procureur-Syndic of the department that of the petty jury.

Both these public officers are chosen by the people.

MAGISTRATES OF POLICE.

The police, through the whole kingdom of England, is exercised by justices of peace, and all these magistrates are nominated by the king.

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The sheriff, another royal officer, is also invested with a certain power in the maintenance of public order.

The duty of superintending the paving, lighting, and cleansing the streets, and of inspecting the quality of certain kinds of provision, is in England, as in France, confided to the municipal officers, and these officers in both kingdoms are elected by the people.

The functions of the police are divided in France between different administrators or magistrates, who are all without exception chosen by the people.

. MARECHAUSSEE.

There is no establishment of a *maréchaussée* in England. The justices of peace have subaltern officers under them, called by the name of constables, and these constables are nominated by the justices of the peace in their

quarterly sessions, who are themselves appointed by the king, as I have already said.

There is a *maréchaussée* in France bearing the name of national gendarmerie. The administrators of the departments, all chosen by the people, compile the military list of persons eligible to places in the gendarmerie, and out of that list the colonels on every vacancy make choice of five, from whom the administrators of the departments are obliged to select one. The king has no power of interfering except to grant the necessary patents; and his only free function in elections relative to the gendarmerie, is to nominate to the offices of colonel, the number of whom is eight, but this only on every other vacancy, and even then his choice is confined to one of the two senior lieutenant colonels. All the other promotions in this corps take place by seniority.

COLLECTION OF DIRECT TAXES.

The commissioners authorized by act of parliament to assess the land tax, as well as the different receivers, are, in England, appointed by the board of treasury, with the special or tacit approbation of the king; since the minister of the finances, who is at the head of that board, as well the other members who compose it, are chosen by the king and liable to be dismissed at his pleasure.

In France the assessment of the direct taxes is made by the directors of department, the directors of district and the municipal officers; and the collectors, receivers and treasurers are in their nomination.—And these members of departments and districts, as well as the municipal officers, are all elected by the people without any intervention of the king.

COLLECTION OF INDIRECT TAXES.

In England the collection of these taxes is entrusted to the direction of different commissioners, as commissioners of excise, commissioners of customs, &c. and these commissioners are appointed by the board of treasury, always with the royal consent, since, as I have said before, it is the monarch who chooses the members of that board, and who has power of dismissing them whenever he pleases.—All the inferior employments are bestowed by the commissioners, with the tacit or express approbation of the minister, as first lord of the treasury.

The government in France names a small number of administrators who are to control the collection of indirect imposts in Paris: but the law obliges it to the selecting these administrators from among the clerks who have served for the greatest number of years and

have risen by gradation to the highest appointments. Government is also authorised to chuse the directors, but it is from among three persons who shall be pointed out by the administrators. These directors fill the office next immediately under the administrators.

All the other employments are disposed of, without government having any concern in the matter, agreeably to rules of promotion established by the national assembly : and admission into the inferior offices, whence they are to rise in this department, depends wholly on the administrators.

Foreigners will with difficulty believe that the legislators of France could wish to descend to such minute particulars, and thus circumscribe, as they have done in every sense, the supreme executive power.

NATIONAL TREASURY.

The functions of the national treasury are confined, in France, to the keeping a register
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of the receipts and disbursements of the state, and to the distribution of the produce of the imposts, agreeable to the disposition thereof decreed by the national assembly: but in England the power of the treasury extends much further, and the board which directs it has properly the administration of the finances, under the superintendence of the minister or head of that department.

I have already said that the members of this board are appointed by the king and revokable at his pleasure.

The national treasury of France, limited in its functions, in the manner I have just explained, is conducted by six commissioners. These commissioners are nominated by the king; but they render an account of their conduct immediately to the national assembly, without the mediation of any minister.

The nomination of commissioners of the treasury, was not put down as one of the constitutional

stitutional prerogatives of the monarch, and it has been already proposed to the national assembly to deprive the king of this privilege : the idea has been adopted, but the decision has been adjourned.

The commissioners of the treasury have power to nominate all their inferior officers, without any dependence either on the king or his minister.

ARMY.

The admission into the army, and the nomination of all the officers, depend in England wholly on the executive power. There exist indeed certain rules respecting promotions ; but these all flow from the will and authority of the monarch.

In France the legislative body has itself fixed the rules of promotion, and the constitution has left only to the king the nomination of one third of the colonels and lieutenant

colonels, half the camp marshals and lieutenant generals, and the whole of the marshals of France, the number of which is fix.

Besides, the monarch is confined by law to make his choice among the officers next in rank below.

Lastly, even admission into the service depends on an examination, the conditions of which have been fixed by the legislative body.

KING'S GUARDS.

No law in England lays the king under any restraint, either in the choice or the advancement of the officers of his guards.

The national assembly of France, has in the first place, fixed the conditions for admitting persons into the guards whether in quality of officer or common soldier ; and has also submitted the promotions of the officers to the same regulation as are observed respecting the troops

troops of the line, of which I have already given an account.

MILITIA.

The lieutenants general of the militia are chosen by the king. These officers, with his permission, appoint the colonels, and the colonels nominate the officers of the companies.

In France, the national guards choose all their officers of every rank, nor are they obliged to give any information to government of the result of such elections.

NAVY.

All the officers of the navy of England are appointed by the king ; and the rules of promotion and admission into this service, depend on his authority.

In France promotions in the navy are determined by the legislative body : and the constitution

stitution itself has confined the prerogative of the monarch to the nomination of one sixth of the lieutenants, half the captains, one third of the vice admirals, and to the choice of three admirals.

Besides which, admission into the navy is submitted to certain positive conditions, which render it independent of the will of the monarch.

CIVIL ADMINISTRATION OF THE MARINE.

In England, all employments in the civil administration of the navy, are given according to the king's pleasure, by a council of admiralty, of which the minister for this department is the head. All the members of this council are appointed by the monarch, and the commission may be revoked at his pleasure.

In France, the rules for promotion even in these kind of offices are fixed by the legislative body,

body, and to these rules the king is obliged to conform in the small number of appointments which are left to him : and even on these conditions, according to the constitutional act, he can nominate only one half the masters of administration and of the under-masters of construction.

INVALIDS.

The administration of the celebrated hospital at Greenwich, the rules of admission to the benefits of that institution, and the dispositions respecting the retreat of the invalids, depend immediately on the authority of the monarch.

The legislators of France have converted the government of the royal hospital of invalids into an elective and municipal administration, and this important part of the public weal, with all its dependent branches, are taken from the hands of the king.

CIVIL EMPLOYMENTS RESPECTING THE INTERIOR
PART OF THE KINGDOM.

The lord lieutenants of counties are nominated by the king of England; their principal functions concern the militia. The sheriffs also, with very few exceptions, are appointed by the monarch. Their functions are entirely civil. They ought to make the circuit of their counties twice a year, in order to execute different objects of their administration. They form the list of juries, summon them, and are empowered to enforce their attendance. They levy all fines, recoveries, amercements, &c. The sheriffs have no salary, and their office is purely honorary: but there exists in the administration many posts to which very considerable emoluments are attached, among others, the place of governor of the cinque ports.

All those employments are in the nomination of the king.

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There no longer exists a single office of this kind in France, in the gift of the monarch.— Every part of the interior administration is entrusted to councils, to directories of districts and departments, the members of which are elected by the people.

The command of fortresses and military castles are assigned, without any peculiar emoluments, to the commanding officer of the troops who shall happen to be stationed there.

ORDERS OF KNIGHTHOOD.

The king of England has the right of creating orders of knighthood, and no person can be admitted into them without his consent.— These orders at present amount to four; the order of the Thistle for Scotland, the order of St. Patrick for Ireland, the order of the Bath and the order of the Garter for England.

There are also other national and honorary distinctions conferred by the king, as the

hereditary title of baronet, and the title of knight conferred for life only.

The order of St. Louis is the only one in France which is permitted to subsist, and this distinction is obtained as a matter of right after twenty-four years military service.

The constitution has conferred on the legislative body the right to establish laws, according to which marks of honour or decoration shall be granted to those who have rendered services to the state; as well as the right of decreeing public honours to the memory of great men.

PECUNIARY FAVOURS.

In England there are a certain number of lucrative employments, of which the inutility is so fully acknowledged that they are called by the name of *sinécures*; but parliament permits the emoluments of them to subsist, as a charge on
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the public treasury, to preserve to the king the power of bestowing pecuniary favours.

No such places exist in France, nor has any similar prerogative been accorded to the sovereign. An annual fund is indeed reserved of two millions of livres, to be disposed of in pensions and gratifications ; but it is thus that the participation of the monarch in the distribution of this fund is expressed by the constitution : *the king orders the list of pensions and gratifications to be made out, in order to be presented to the legislative body each session, that it may be decreed if thought proper.* They are careful not to tell us, whether this list shall include all the pensions and gratifications which have been demanded, or those only which the king has judged reasonable. They have not thought it necessary to give the king the initiative in this particular, for the most trivial solicitations are addressed directly to the assembly, and the entire mass, as well of pensions

and gratifications recently bestowed, as of pensions continued, was fixed in the last sitting of the assembly upon the report and proposition of one of their members.

I could easily, by entering into particulars, extend this parallel farther, but I have already said enough to answer the end I proposed to myself.

I remember when it was said in France, that the king of Great Britain was only the principal senator in a republic. At present however his prerogatives are as superior to those of the *king of the French*, as those of the *king of France* were formerly superior to his.

The nomination of ambassadors and ministers to foreign courts, is the only prerogative that has been granted in a similar manner to the monarchs of both countries. And here the parallel would probably have failed, if advancement in the diplomatic career could have been made subject to fixed rules.—I have one
other

other important observation to make in regard to the nominations entrusted to the king for the national benefit: it is that in leaving the consistence of the executive power imperfect, in neglecting to harmonize, if I may so express myself, the royal functions with each other, in retaining the monarch in a perpetual state of uncertain and intermittent existence, the faculty which is conceded to him, of nominating to certain employments, is either null, or produces an effect very different from what those by whom it was conceded intended; since the king finds himself perpetually solicited in the application of this faculty by the different individuals who offer themselves as the supports of his precarious authority. It may even be asserted without paradox, that by reducing within too narrow bounds the nomination entrusted to the executive power, they have more inevitably introduced corruption than if they had invested the monarch with all the prerogatives essential to his dignity. For having

once rendered him contented with his situation, they might then expect him to be influenced in his actions by a view to the public good ; but dissatisfied and mal-content, he must be expected to aspire to the perpetual increase of his authority. In this view of the subject I proceed upon general ideas, which may fairly be extracted from the character of man and the principles of his nature, and take no account of particular exceptions.

It must on all hands be confessed that there is in the French constitution one remarkable singularity. It is required of the monarch that he should dispose the people to obedience, that he should cause the laws to be executed, that he should maintain public order, that he should attend to the due assessment and payment of the taxes, that he should provide against and remove all obstacles in the circulation of provision, that he should give to every department of administration the necessary energy, should regulate its motions and smooth all its difficulties ;

difficulties ; in fine, the defence and safety of the state are entrusted to his vigilance and activity.—Such are the duties imposed on him, and at the same time in the most difficult and essential parts of the government, he has agents assigned to him, respecting whom he has no choice, some deriving their places from the suffrages of the people, and others from the fixed and invariable laws of promotion. It has already been seen that the magistrates civil and criminal, the justices of peace, the members of the tribunal of annulment, those of the high national court, the administrators of department, the administrators of districts, the municipal officers of the towns, all those who preside over justice, police or administration, are nominated by electors who have themselves been chosen by the active citizens at large ; and all intervention of the king, his consent, his approbation, every thing that can indicate the slightest concurrence on his part, has been solemnly rejected, It is precisely in
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the same manner, and without any communication with government, not even the formality of one investiture, that the ministers of religion are appointed, those professors of moral justice and depositaries of ghostly superintendence over the opinions and consciences of mankind. The national gendarmerie, whose business it is to protect by armed force the safety of the high ways, the tranquillity of markets, and all other parts of external order, is chosen by the different departments, the king having scarcely a voice in the appointment. The national guards elect their own subaltern officers, and the subalterns the field and commissioned officers. The army and the navy, with a very few exceptions are subjected to an invariable scale of promotions. In fine, the receivers and treasurers of the direct taxes are neither appointed in the first instance, nor sanctioned in the last by royal authority; and the individuals employed in the superintendence of indirect taxes are nominated in regular succession

ſucceſſion by thoſe next above them, the privilege of the government extending only to the ſelecting thoſe of the firſt order out of the perſons conſtituting the ſecond.

Thus, in every arrangement that has been made, diſtruſt towards government is ſo conſpicuouſly prevailing, that the neceſſity of its aſcendancy and conſideration might be ſuppoſed to have been totally removed out of fight.

Never was the project before conceived, of impoſing on the chief magiſtrate functions the moſt extenſive, and obliging him at the ſame time to execute them by agents attached to him by no fort of tie; neither by the tie of gratitude, ſince they are not choſen by himſelf; nor by that of ſubordination, ſince they derive their power from the people; nor by that of hope, ſince there is nothing which the monarch can beſtow upon them.

Could it be ſuppoſed that by leaving to the king the choice of his miniſters, all the other
agents

agents of the government ought to be appointed by the nation ? But the ministers of the king are a part of himself, and can never be considered either as a supplement to his power or an addition to his dignity. They constitute one of the exterior wings of the royal edifice, and precisely that which the winds, hail and tempests endamage the most readily.

Such persons, as have observed with attention the progress of affairs, will have readily perceived, from the last discourses addressed to the constituent assembly, by its principal committee, that this committee began at last to be aware of the insufficiency of the means destined to the support of the executive power, and felt the necessity of giving more energy to the royal authority : but the credit of the committee was no longer high enough to persuade the assembly to tread back its steps. For this purpose it would have been necessary to obliterate the innumerable de-

clamations, which, under other circumstances, they had employed to express contrary sentiments. The impression was given and it was too late to efface it ; the prejudice was formed and to attempt to destroy it was a hopeless task. A powerful lesson, which may make men aware of the dangers annexed to the language of the passions ! This language delights the hearer by the promptitude of its corructions, but it hurries him along with it ; and deprives him of the power of firmly making his stand at the post of reason and truth, when such a stand is most salutary and indispensable. Thus it was seen that, in the revision of the constitutional articles, the reporter of the committee endeavoured to obtain the suppression of the decree which forbade the king to chuse his ministers from among the national deputies ; his arguments, however powerful, were in vain ; they would not hear him, and it was impossible they should, for the subject was new, the committee had never fixed the
attention

attention of the national assembly to the difficulties attending the judicious construction of the executive power. The cry therefore of personal interest in the proposer bore down this wise suggestion; a suspicion that is always at hand, and by the narrowness of its character is more easily comprehended and readily credited than the great and political considerations that are most worthy to influence. Not to add that the national assembly never returned upon their steps but with peevishness and ill will; since they had undertaken not only to produce a political chef-d'œuvre, but to produce it at a single heat. Alas! how great is the portion of virtue necessary to constitute perfect legislators! For my own part, I lay more stress upon the virtue necessary, than upon the science.

The national assembly, however unwilling to confess it, had nevertheless a secret feeling how little it was that the executive power, in its reduced state, could do; and it appears

that the exercise of punishments was the grand engine they wished to employ to remedy the inconvenience. Thus the public accuser acts a principal part both in the political institution and in all the deliberations of the assembly : and by an unheard of change, condemnations and executions are at once become the resource and hope of the French nation. But if, during the many ages that society has existed, punishments had been thought adequate to the regular movements of a great empire, the words government and administration would neither have been consecrated by time, nor have found a place in any language ; the apparatus of judgment, destined to put in force the vengeance of the law, would have answered every purpose. But it was found that nations required to be held in softer reins ; it was found that the innumerable interests, in opposition to public order, demanded an active superintendence and an authority of opinion, that should restrain, without

without effort or violence, all the active springs of the social system, and preserve the general harmony. The destination therefore of the executive power is not, as has been supposed, to use the sword of the law ; on the contrary the very reverse of this is its duty, and it can then only be useful when it supercedes the necessity of having resort to means of force ; means that always debase the soul, and that, in a free country in particular, it is impossible frequently to employ without irritating the minds of the inhabitants and perverting their natural characters.

Meanwhile let us not forget to observe, that in proportion to the variety of springs and wheels that compose human society, are the accidents and errors that disturb its operations ; and it is not with a cold and unfeeling hand, it is not by the use of one instrument or one machine, that the nation can be preserved from the different ills with which it is menaced. Anarchy and disorder are not without

out their dangers ; but political lethargy and dulness are equally to be feared. Good order may be destroyed in a kingdom by the weakness, by the indifference, and by the inactivity of the administrative or other intermediate authorities. Punishments are not calculated to dispel this political stupor ; it is the property of hope alone to support a continued activity ; and so great is its power, that it rises superior even to the sensation of fear, by suggesting, when necessary, those deceptions which inspire us with confidence that we shall escape dangers apparently inevitable.

Nor let us, in considering it thus generally, lament the empire of hope. It is milder, and, in my opinion, more consonant to our nature than the stern dominion of avenging laws. In the vast range of public affairs, and the various labours which they require, it becomes necessary to hold out to men different motives to action. To some, though the number is small, we may present glory and renown ; to others

the solitary enjoyments of virtue; to the generality, as a temporary motive, the love of country, together with the various modifications which the ardour of passion can give it; but to all mankind, as a permanent excitement in every vicissitude, hope even though confused and precarious. It is therefore requisite to confide the means of exciting hope, at least to a certain amount, to him to whom we confide the executive power, that this power, otherwise impotent and inactive, may thence derive a vivifying force and a real energy.

CHAPTER XIII.

Forms observed towards the Monarch.

IT is not only by the aid of real prerogatives annexed to the executive power, that its high consequence and dignity, so necessary to its effectual exertion, are formed and maintained. It is also indispensable that the chief magistrate should be surrounded with all that is calculated to control the imagination. We are all accessible to certain kinds of impressions. An early and continued education of our mental powers, the consequence of leisure and wealth, enables some of us to submit our sentiments and principles to the slow results of an enlightened meditation; but the mass of mankind, I mean those who are obliged to employ the first developement of their fa-

culties in lucrative pursuits, will always remain under the influence of the most simple ideas. This is no reproach to their understandings, but the inevitable effect of their humble condition. From these indestructible truths, innate in our minds and inseparable from the social character, it is found, that, to maintain in a vast kingdom the mysterious bonds of subordination and obedience, we must enlist on our side the momentary passions of mankind, and their mature and deliberate sentiments.

The generality of men, attentive only to the ideas of pride and vanity, with which the splendor of their rank has inspired princes, have been induced to consider this splendor as of no utility to the social interest; and the short sighted philosophers of the day, advancing a step farther, have represented as a degradation, all the forms of respect destined to give lustre to the majesty of the sovereign. But the illusions of kings, respecting the
origin

origin and spirit of these different homages, ought not to lead us into a contrary mistake, and divert our attention from those primary ideas and general views, which have converted into a political element the brilliancy of the throne and its lenient authority over the human imagination.

The constituent assembly had not these ideas sufficiently present to their recollection ; or rather they sacrificed them with too much levity to the dictates of passion. Yet, as they were every day curtailing the real prerogatives of the monarch, it became the more essential to be particularly tender in preserving the habit of respect shown to his superior rank ; as they were every day diminishing his effective means of ascendancy, it was the more incumbent not to obscure the rays of glory, that, in the imagination of his people, encircled him. But our legislators, for what reason I am unable to divine, have always regarded the obedience of a great nation as a

simple idea, which it was sufficient to fix by an article of law. It has been decreed that the executive power should be placed in the hands of the monarch, without having bestowed a thought on the formation of this power; they have also declared the French government monarchical, and have taken no account of the manner in which the majesty of the throne should be constituted. The utility however of a monarch does not consist in his title, but in all the concomitants of royalty, in those different attributes which captivate attention, impose respect and command obedience. In fine, and I am perhaps about to start a subject worthy of much reflection, they have held in contempt every sentiment arising from custom and opinion, without perceiving that it is by the authority of the monarch over these very sentiments that he becomes absolutely distinct from the law, and is able to give it energy.

The national assembly would probably have
discovered

discovered all these truths, if they had not so early abandoned themselves to a spirit of jealousy. They have uniformly regarded the king as a rival, instead of having the courage, becoming in them as legislators, to consider him as the principal actor in a monarchical government, and prudently to communicate to him in time his share in the public business. With peculiar indiscretion they gave him, during the greater part of their session, the humble title of *first public functionary*, and it was not till after they had drawn up and digested all the articles of the constitution in this style, that, in the very close of their labours, they thought proper to communicate to him, for the first time, the appellation of *hereditary representative of the nation*. They were not aware that this denomination alone, than which none could be more proper, required that the legislators should go over the whole business again. What would be said of a painter, who, after intending to represent

on his canvas the attributes of the first of the fabulous deities, and perceiving, at the last touch of the pencil, that he had forgot to place in heaven the master of the earth, should imagine that he could repair the whole mistake by writing in large characters the name of *Jupiter* at the bottom of his picture?

The English, jealous to an excess of their liberty, and who display even in the habits of social life a character of independence, have always been desirous of paying the highest honours to their kings; and so far from thinking themselves debased by such homages they feel a kind of pride in complying with them. They consider the splendor of the British throne as a sort of image or reflection of the national dignity, and they strive by their particular deference to secure to the chief of their political union the deference of all Europe.

When the sage superintendents of the English constitution fixed their minds upon the great principles of government, they doubtless
readily

readily perceived, that, among all the different modes of giving authority to the executive power, the mildest and most suitable to the haughtiness of a free people, is the dignity with which the king, as chief of the state, stands forward the visible interpreter of the majesty of the law. Observe the contrast between their practice upon this subject, and the practice of France. In France the chair upon which the monarch is seated is upon a level with that of the transitory president of the national assembly; and they have taken care to measure with the exactness of an artificer their precise parallelism: while the English house of commons, that house which makes kings and circumscribes their prerogatives, that house which with tranquil energy would, no doubt, repel the slightest attack upon the national liberties, goes in a body to the house of peers, stands humbly below the bar, and, with a decent and unassuming countenance, receives the communications which

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the king, seated in royal state, addresses to his parliament. The speaker then answers the king, preserving those forms of respect, a thousand times more honourable to the nation than that language of fellow to fellow, scrupulously constructed and laboriously kept up by the different presidents of the national assembly. All this democratical bluntness is far from the true sublime ; it clearly demonstrates in those who employ it, that they are not yet inured to the sentiments of liberty ; and we may apply to certain exalted sentiments, which we hear repeated every day, the observation once made by the chancellor d'Aguesseau on the political erudition of a man of letters : “ It is evident that all his knowledge is but “ of yesterday.”

I shall not enter into a detail of all the instances of disrespect shown to the king, of which the whole conduct of the last national assembly exhibits an uninterrupted example ; but shall confine my attention to the constitution

tion itself. It is not however less true that there has resulted from the levity of debates held by various deputies, a sort of encouragement or pretext for that multitude of pamphlets, the truly licentious language of which has formed by degrees a general habit of contempt for the throne and the monarch. Nor is the tardy penalty, denounced against those *who shall deliberately compass the degradation of the constituted powers*, any remedy to the evil. The expression is itself vague, capable of various interpretations, and will never fail to be explained according to the spirit of the moment: besides which, the execution of this law depends upon the action of a public accuser, appointed by the people, and the tenure of whose office soon draws to a conclusion. In fine, the queen, whose dignity cannot in reality be separated from that of her consort, the prince royal, heir apparent to the crown, and the other princes of the blood, are placed upon a level, with respect to the calumnies

calumnies they may sustain, with the private citizens at large : they must prosecute in their own name ; they must appear in court in person, and thus expose themselves to the additional outrages which the defendant may employ, either as the means of justifying his first error, or merely to make himself the subject of public attention. Nothing can be more clear than that persons of this illustrious rank, or even private citizens, attached to their repose, will never enter a prosecution upon such conditions.

The majesty of the monarch is still farther attacked by degrading the person of his ministers. They are appointed by him, they are the mediums of his will, they compose his council ; all therefore which interests their character is of consequence to his dignity. Meanwhile they are, as every body perceives, obliged to look for support to their littleness, for existence to their nullity, and for safety to their impotence. They are still farther delivered

livered up to the arbitrary good pleasure of every pitiful pamphleteer ; nor can they with prudence overlook the capricious calumnies of those miserable wretches. The penal code, which has been invented for the offences of ministers, is also, by the minuteness of its attentions and the ignoble jealousy of its detail, an indirect attack upon the majesty of the king.

Nothing seems to have amused the assembly more than to trample upon all those ideas which opinion had hitherto rendered sacred ; and thus they have been led to a vulgar familiarity and a cynical impertinence towards the king and his ministers ; very delightful, if you will, to those who compare their present ease and upstart impudence with their former timidity and long established customs ; but which inspire the strongest disgust to those who, during every variation of the political barometer, have been actuated with moral fortitude and manly consistency.

This pretended freedom of sentiment, of which they so much boast, is the result of an injudicious combination of republican with monarchical principles, the discordance of which is perceptible in various parts of the French constitution. How much better have these principles been understood and discriminated in the constitution of England ! There both have their proper place, and they act in mutual harmony. Time and experience have no doubt contributed to effect this harmony ; but we have come the last, the way was prepared before us, and if we have neglected to take advantage of the circumstance, to the overweening vanity of our legislators is the fault to be ascribed : they have preferred feigning themselves above reason, to the holding a secondary rank ; they have preferred being the masters and leaders of a sect, to the transmitting to us a happy and peaceable creed.

Shall I, as the title of my chapter would authorise, enumerate certain miscellaneous

proceedings in which the royal majesty of France has been treated with an indignity, to which we find nothing correspondent in any of the institutions of the free country, which serves me for a parallel?—I should have to animadvert on every particular of the ceremonial observed in the intercourse of the national assembly or its deputies with the chief of the state; on the rule forbidding the president ever to form a part in any deputation of the legislative body to the king; on the decree limiting the retinue of the monarch whenever he appears in the assembly, and in such a manner that even the princes of his blood may not accompany him. I should have to animadvert on the familiarity with which he is treated upon every occasion; the affection of always speaking to him in the second person; the permission given to a president, whose official existence is but for a fortnight, of writing to him precisely in the same style as he would write to a private individual; the mode of bringing

into

into question every petty form, which has been carried to such an excess that the chief of a deputation has been covered with the applauses of the assembly, for giving an account of his mission in these terms: “ When we entered,
 “ I believed the king first bowed towards us ; I
 “ accordingly returned his salutation ; the rest
 “ of the ceremonial passed according to usage.”

You think it then, gentlemen, magnificent and superb to dispute with the king even the honour of making and receiving a bow ? At this rate your heroism will presently become so gigantic as to proscribe all the rules of decency. I should think however, that, to have given relief to the intrepidity of your courage, it should not have been exercised towards a king who was a prisoner, and who might see from his windows the courts and gardens of his palace, crowded with men armed with pikes and other instruments of offence. I remember to have read, that Edward, the Black Prince, served king John of France upon his knees,

knees, after having taken him prisoner in the battle of Poitiers.

But putting out of the question the duties that superiority on our part requires of us, and the magnanimity of a gallant victor, I ask once again, where is the political wisdom of deciding in favour of monarchy, while we trample under foot the majesty of the monarch ? This interesting question has always been evaded by the national assembly. They found it more commodious to refer upon all occasions to the principle they had laid down, of the equality of mankind ; and this principle, applicable to all the abstractions that speculation can engender, and all the chimeras that an unbridled imagination can produce, has been the chief source of the errors which have been committed in the construction of the new government of France.

But let us proceed to notice some other legislative measures, remarkable for a total forgetfulness of the royal dignity, and which have

no existence in England. Among this number we may include the obligation imposed on the king of never removing to greater distance than twenty leagues from the legislative body; an obligation which we ought to compare with the liberty granted to every legislature of holding its sittings wherever it pleases, and of continuing them without interruption. So that, according to the strict construction of the constitution, a king of France may live to the age of fourscore years, without ever having travelled into the heart of the Brie or the district of Chartrain.

Of the same nature is the incapacity to which they have reduced the king of never taking the command of the army, either without, or even within the kingdom, unless the enemy shall have approached within twenty leagues of the national assembly; for beyond this limit he cannot go, while the legislative body is assembled, and he is bound to convoke it as soon as hostilities commence. Thus have they

they rendered the king of France a stranger to the perils of war, without being at all aware of what they had done. Certainly such a provision, when it is made a part of the constitution, is strikingly incompatible with the true elements of royal dignity.

We may farther remark the disrespect shown to the princes of the blood by excluding them at once from every function, both in the legislative body and in the council of the king, and by depriving the monarch of the power of appointing them either to embassies, or to the command of armies, without having previously obtained the consent of the national assembly.

Nor let us overlook the national guard, placed near the monarch, under the title of an honorary guard, but which, being constitutionally independent of his control, seems rather to resemble a guard of inspection.

The formation of the ordinary guard will also appear upon a close examination to be

equally disrespectful. The assembly have found out the secret of degrading at once the dignity of this corps, and of diminishing the inducement of the officers to merit the approbation of the sovereign.

They have degraded its dignity by excluding the officers from competition with the army of the line in military promotion, by interdicting to them every species of service, except at the palace of the king, and by taking from them the prospect of serving in any instance in war, since the king, as I have already explained, is as it were forbidden any military service.

They have diminished the inducement of the officers of the guards to merit the approbation of the king, since they have applied to them, however distinct from the regular troops, the common and established rules of promotion by means of which the king is excluded, even in the case of his own guards, from appointing any but the commanding officer,

officer, and once in three times the colonels and lieutenant colonels, to the number of eighteen, with this additional proviso, that the king shall be obliged, when his turn comes, to chuse them among the officers of the rank next in order below.

The other officers are employed to guard the person of the king without his concurrence and consent.

I also consider, as a usurpation upon the rights of the monarch, the decree by which the assembly seized into its own hands the territorial domains of the monarch, and made itself successor to the prerogative he possessed of resuming his ancient grants, in case of the failure of lawful heirs. The constituent assembly, to justify its decree, was obliged to have recourse to the ancient laws of France, which had directed the reunion of the royal grants to the public estate. But these laws evidently supposed, as I have observed in my former work, that the property of the state, admi-

nistered by the prince, might be confounded with his private property and serve to swell his personal revenues; but from the moment, when, by an entire change in the constitution, the separation of the two properties, and the division of their administration, were made so complete as to preclude the possibility of confusion, there no longer remained any legitimate motive to assure to the profit of the state, the territorial and personal domains of the king, by substituting in their room a precarious and arbitrary annuity.

The national assembly has itself acknowledged, without being aware of it, the great extent of this property; for in one of its decrees, of the month of November 1790, it is remarked that the ancient domain, or as it is called the public domain, *would soon have been annihilated, if it's continual losses had not been in various ways repaired, especially by the reunion of the particular estates of the princes who at different times have succeeded to the crown.*

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The national assembly nevertheless persisted in its jurisprudence : it had recourse to the spirit of the law and despised its letter, for the purpose of changing various private properties into public property ; and it has on the contrary preferred the letter to the spirit, when it could justify in no other manner the usurpation of the landed estate of the royal family.

The king of England enjoys in like manner a civil list, granted by the nation ; but no indemnification is required for this royal annuity. The English do not take with one hand what they grant with the other, and any compulsory attempt, to add to the revenue of the state the private fortune of the monarch, would be rejected by them as incompatible with the principles of a free constitution.

But the constituent assembly, who had been desirous of installing the monarch in his new capacity of *first public functionary*, were led by a sort of analogy to reduce him at the source to the condition of a pensioner : and when,

towards the close of their session, they adopted the idea of giving him the appellation of *hereditary representative of the nation*, there was no longer sufficient time to reform the various articles drawn up in the spirit of their first invented title.

Let it no longer then be matter of surprise to us, that, amidst these changes and under the novice hands of so many painters of a constitution, the royal majesty should have lost its original colouring. Our first legislators, astonished themselves at their omnipotence, and placing a blind confidence in it, have been daring enough to presume that their rustic authority would supply the empire of the imagination, an empire founded on our very nature and its eternal essence. In the mean time to how many fictions have they not been obliged to resort to maintain their sway? Illusions have been of as much use to them as realities. They trembled every day lest the alliance of opinion should fail them; and
when

when they were unable to gain it, they put every thing in practice to harrafs and starve it into furrender. But opinion is a perfonage of delicate conftitution; a rugged and fevere treatment deftroys her; and legiflators, who underftand no principle but that of violence, ought to beware how they touch her aërial exiftence.

The national affembly has defpoiled the throne of all its embellifhments, royalty of all its attributes, the king of his whole retinue, without previously confidering whether, on fuch terms, the dignity of the chief magiftrate could be maintained, or whether this dignity, which, when undiminifhed, difpofes the people to refpect and obedience, be not one of the principal advantages attached to the inftitution of a king, and the eftablifhment of a monarchical government.

It was particularly in a government, like the prefent government of France, the aggregate of fo many fprings, that they ought to
have

have erected a sympathy and a patriotic feeling as a main support of the dignity of the executive power. They ought to have sought how to invent the sources of his attachment, if it had not already existed. It was then an amusement worthy of children, to pique themselves upon the pleasure of abusing the throne. Liberty is the old age of nations ; it makes them judicious and wise, and will not fail to show them the truth of what I have here advanced.

CHAPTER XIV.

Right of Peace and War.

THE choice that a nation makes of one of the powers of which the government is constituted, for the purpose of investing it with the right of contracting alliances, declaring war and concluding peace; a choice that is to determine in what hands the most important political function shall reside, cannot be foreign to the dignity of the monarch: but as other, still more essential, interests, ought to have their weight in so serious a decision, I have avoided introducing the discussion of this subject when examining the various circumstances calculated to heighten or to diminish the lustre of the throne.

It is well known that in England the king
can,

can, by his sole authority, make war or peace, and enter into all sorts of treaties whether political or commercial.

The monarch is hereby exhibited to foreign powers arrayed in all the dignity necessary to the conducting honourably and advantageously the affairs of the nation. But government is nevertheless held by a two-fold check of a very salutary nature. It can raise no supplies for war or any hostile enterprise, without the consent of parliament; and the responsibility of ministers is an adequate security for the care they will take, in all such transactions, to consult public opinion.

We were determined to go farther, and the imperfection of our law respecting peace and war, sufficiently argues the wisdom of the English constitution in its distribution of the powers respecting this important question. England, in reality, has done us much harm by having seized, through the joint dictates of experience and good sense, the exactly right point

point among the infinite variety of administration: for vanity made us determine to have a system of our own, a new and untried project, and we were forced to take it on one side of the dictates of reason, and often at no small distance from those dictates.

To perceive in what manner these observations are connected with the subject of which we are treating, it is necessary to call to mind the provisions of the constitutional law of France respecting the right of peace and war *.

This

* *Chap. III. Sect. i. Art. 2.* War cannot be determined on, but by a decree of the legislative body, passed on the formal and necessary proposition of the king and sanctioned by him.

In the case of impending or actual hostilities, of an ally to be supported, or a right to be preserved by force of arms, the king shall notify the same without delay to the legislative body, and shall declare the reasons of it. If the legislative body be not sitting, the king shall immediately assemble it.

If the legislative body determine that war ought not to be made, the king shall immediately take measures
to

This law, without being at all more favourable to the maintenance of tranquillity than the law of England, obscures unnecessarily the majesty of the throne, throws impediments in the way of political negotiations, and reduces the nation to a state of

to stop or prevent all hostilities, the ministers being responsible for delays.

If the legislative body find that the hostilities commenced are a culpable aggression on the part of ministers, or any other agent of the executive power, the author of the aggression shall be prosecuted criminally.

During the whole course of war, the legislative body may require the king to negotiate peace, and the king is bound to yield to this requisition.

Chap. IV. Sect. iii. Art. 1. The king alone can keep up foreign political connections, conduct negotiations, make preparations of war proportioned to those of the neighbouring states, distribute the land and sea forces, as he shall judge most suitable, and regulate their direction in case of war.

Art. 3. It belongs to the king to resolve and sign with all foreign powers, all treaties of peace, alliance and commerce, and other conventions, which he shall judge necessary for the welfare of the state, with a reserve for the ratification of the legislative body.

considerable inferiority in its foreign transactions.

If the different sovereigns of Europe, adhering strictly to the laws of honour, were never to engage in war till they had made their intentions known by a formal declaration, a numerous assembly, deliberating openly on the propriety of adopting or rejecting a measure of such importance, would scarcely be inferior to a king meditating in secret with his council. But experience has taught us, that the policy of princes can, whenever they please, dispense with these moral restraints : and, in that case, where is the equality between a monarch, who declares war by actually commencing it, and a national assembly, openly discussing a question like this, and divulging its intentions long before the period that hostilities can begin ? The assembly may indeed adopt or reject the motion for going to war with so much expedition, as to remove in some degree the inconveniences resulting from
a pre-

a premature promulgation of their designs : but the misfortune is that such expedition can only take place at the expence of wisdom and of all the dictates of prudent circumspection. Besides, how can a speedy deliberation be expected in a business of so serious import, unless a previous judgment should have been formed respecting it in those clubs or societies which govern the assembly of legislators? But there the objection would equally hold, and its application only would be changed.

Let us suppose, that two powers, after having deliberated for a considerable time on the propriety of going to war, should resolve to remain at peace. The one has been able to confine its doubts and deliberations within the breast of a cabinet council, and has thus excited no distrust. The other, from the nature of its constitution, has displayed its hesitation to all the powers of Europe, and evinced, perhaps, that the pacific system it adopts is the result of a trifling majority in a numerous
4 assembly :

assembly: alarms are excited, defensive measures are adopted; these measures produce reciprocal precautions in the other party; a quarrel ensues, and war is thus occasioned by the circumstance of the question having been publicly discussed.

I have another observation to make on this constitutional decree respecting peace and war. It prohibits the monarch from declaring war without the consent of the legislative body, and at the same time formally supposes that hostilities may be commenced by the government; and yet hostilities are commonly considered as the strongest declaration of war. It was impossible therefore to maintain this confusion of prerogative in matters of war, but in a very doubtful and imperfect manner, reserving to the legislative body the right of suspending hostilities, and making the ministers responsible for any delay; for hostilities already commenced draw on others on the part of the nation attacked, and we are not always sure of

suspending their progress by stopping ourselves.

Hostilities then, like declarations of war, ought to depend on the same authority, as should also the preparations that usually precede them, for these preparations are frequently sufficient of themselves to effect a political quarrel.

It is not easy to understand the meaning of the constitutional act as to the right of commencing hostilities ; it neither delegates nor refuses to the executive power this right, and we must search for the spirit of the law in certain implications and loose expressions.

There is no doubt however but that government has a tacit authority to determine on a measure of this nature, for the following are the words of the decree : “ In the case of im-
 “ pending or actual hostilities, the king shall
 “ notify the same without delay to the legisla-
 “ tive body, and shall declare the reasons for
 “ such hostilities.”

It

It is evident that this article relates to hostilities commenced by the king, and not by a foreign nation, because government is obliged to assign the reasons ; and because in another article it is said, that, on the vote of the legislative body, “ the king shall immediately take measures to stop or prevent all hostilities, the ministers being responsible for delays.” How could they be responsible for putting a termination to hostilities on the part of “ *other nations* ?”

This explanation appears likewise to be confirmed by a farther article, which says : “ If the legislative body find that the hostilities commenced are a culpable aggression on the part of ministers, or any other agent of the executive power, the author of the aggression shall be prosecuted criminally.” They are therefore *culpable* aggressions only which are prohibited, and not all hostilities indiscriminately.

But it was not in this indirect manner that

it became a legislative assembly to explain themselves on a question of so great importance: and it is the more unaccountable and extraordinary, since in speaking of the right of declaring war, and of making the necessary preparations, they have expressed themselves with the most perfect precision:

“ War cannot be determined on, but by a
“ decree of the legislative body.”

“ The king alone can make warlike preparations proportioned to those of the
“ neighbouring states.”

Why then does the constitutional decree mention hostilities only in ambiguous terms? “ In case of impending or actual hostilities
“ the king shall notify the same, &c.” The article is so singular that it can only be accounted for by the embarrassment of its compilers. To have said expressly *the king has a right to commence hostilities*, after having previously decreed that *war could only be determined on by a decree of the legislative body*,

would have excited the laughter of all Europe; and there would have been danger that some one might have risen up in the national Arcopagus, and asked: Are hostilities then no declaration of war? The majority of wars have commenced by hostilities, and instead of declarations of war, manifestos have been published justificatory of an attack made without formal notice.

On the other hand, taking it in a different point of view, to have enacted *that hostilities could only be determined on by a decree of the legislative body*, would have been giving to other nations no inconsiderable advantage over us; and some one in the assembly, recollecting that the last maritime war had commenced by the sudden capture of all our vessels and their crews, might have asked, Wherein consisted the policy of thus depriving ourselves of the possibility of similar retaliations, and augmenting at the same time the security of such aggressions towards us?

The members of the committee of legislation probably said to themselves, amidst their embarrassment, Let us slightly pass over the difficulty by some vague and obscure expression respecting the article of hostilities ; nobody will perceive it ; and by reducing the question to the empty formality of declaring war, we shall be able, with speciousness and plausibility at least, to adjudge to the legislative body the initiative in the transaction. The committee were not mistaken ; and this decree, which authorised the monarch to make preparations and enter upon hostilities, at the same time reserving to the legislature the right of declaring whether there shall be a war, has been applauded by all Paris as the most judicious contrivance in the world.

Let us proceed to take into consideration the articles of the code before us, which relate to treaties of peace, alliance and commerce. The king is invested by the constitution with the necessary power for negotiating and signing

ing any compacts of this nature, but they are not to be valid till they have been ratified by the legislative body.

Simple as this condition is in appearance, it will be found otherwise in its application, and the result of it will be, that the negociation of treaties will be attended with greater difficulty, and the treaties themselves be less advantageous to the French nation. A contracting party seldom makes known its last concession, till it is sure that that concession will bring the business to a conclusion; apprehensive that it might give an advantage by discovering the extent of the sacrifice which interest or its peculiar situation would oblige it to make. This reserve would increase, if the constitutional weakness of the negotiating power afforded no moral certainty of the approbation of the political body, in whom the ratification of treaties was vested. Beside, if you put together this disproportion of forces, if you add the superior privilege attributed to the

national assembly, and the farther influence of a right they have reserved to themselves, of requiring the executive power to negotiate a peace, you will readily confess, that the legislature will not fail to demand to be informed of the progress of the negotiation : this information will of course be made a subject of the debates of a numerous assembly, by which means the other party in the negotiation will perfectly understand our designs, while she will be able to cover her own with the veil of secrecy. This situation is much like that of a merchant, who should possess the magical power of knowing to a penny how much the buyers would give, and how little the sellers would take, without being in any degree obliged to discover his own intentions upon the subject. A person, provided with such a talisman, would not fail to make an enormous fortune.

It frequently also happens that there is only a single moment for the successful termination
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of a political treaty ; for the consent of the contracting power may depend on a variety of transient circumstances, circumstances of such a nature, that the mere idea of such a treaty being on foot becoming public, may strangle it in its birth. And when we consider, that, by making it necessary for the subject to be previously discussed in a numerous assembly, war may perhaps be protracted and an indispensable peace delayed for a whole year, by the vain declamations of men whose only object is applause, we shudder at the danger of such a measure ; and cannot help believing that the British have acted wisely in investing the chief of the state with the necessary power of conducting through the different stages, and bringing to a definitive conclusion, treaties of peace and all political negotiations. Nor is it to be feared that, in a free constitution, the responsibility of ministers should not prove an adequate safe-guard against their treachery, or their acting in contempt of public

public opinion. There is then a boundary within which, for the interest and evident advantage of the state, suspicion and distrust ought to be confined: but this boundary has been almost universally overlooked by our legislators; nor is this at all to be wondered at. Men, naturally inclined to extremes, feel this propensity increase, when the desire of pleasing the people is become their ruling passion; for ideas of wisdom and moderation escape the wavering multitude, who regard with supineness the systematic conduct of statesmen, and whose attention is only to be fixed and their suffrages obtained by highly coloured novelties and striking exaggerations.

Meanwhile, if I were disposed to defend that part of the constitution which relates to peace and war, it could only be at the expence of the whole. I must say, that in the weak and degraded state to which government is reduced, though they were invested with the prerogative, they could conclude no treaty without

without the concurrence of the national assembly. There are certain proportions in the social edifice, as well as in works of architecture, which necessarily require other proportions; and it would be a paradox to suppose that a government, having no internal influence, should possess the means or the privilege of exciting or quelling foreign political storms.

Let this in particular be observed, that a distribution of political power, whatever be the subject to which it relates, is not the creature of arbitrary will, and does not depend upon the clauses of a constitution. A circumstance of such eminent importance will always, legally or illegally, operate in the manner of an inevitable consequence, flowing from the general system of social organization. Therefore, without giving myself the trouble of turning to that particular article of the political code, I can easily pronounce, that wherever, as in France, so large a power has
 been

been attributed to the people, the people either directly, or by their representatives, or by their demagogues, will be the authors of peace and war.

Undoubtedly it is of great importance, that the nation should have considerable influence in affairs of this sort ; but the empire of opinion, like every thing else, is susceptible of abuse ; and nothing can be more judicious than to subject it to certain rules. This I grant is one of the most delicate knots in the science of politics. The English constitution itself has not been able to accomplish every thing upon this subject. It intrusts to the monarch the prerogative of peace and war, and it reserves to the people the right of granting or refusing extraordinary supplies. These two principles are in evident contradiction to each other ; and they have no otherwise been reconciled than by the comprehensive influence of public opinion, and the admirable harmony that characterises the government.

government. Under some form or other, it is a precious advantage to a country, that the national consent should be required to projects of war or their execution. It may happen, without doubt, that the representatives of the people should be the first movers in a political aggression, and England affords many examples; but the number of enterprizes, dictated by the voice of public opinion, cannot be put in comparison with the frequent wars, which arise from the unquiet and ambitious temper of governments limited by no responsibility. Every page of history furnishes evidence of this truth. It may even perhaps be true, that the first and greatest benefit that arises from this wise constitution; a constitution in which the king is placed in the midst of the national representatives, is the reduction, in a given time, of the number of political quarrels, and the calamities which follow from them. No calculation can do justice to the benefit resulting to human nature,

ture, from the subtraction of only one war in a century; but in reflecting upon this, we feel with pleasure, that a single moral conviction of the heart contributes more to public happiness, than all the refinements of that political science, which is ranked in the first order of intellectual benefits, by those who have taken up their residence in the clouds of philosophy.

CHAPTER XV.

Interior Administration.

I Have shown in the preceding chapters that the means confided to the executive power are infinitely more weak in France than in England. What shall we say, if, at the same time, resistance has been rendered more considerable? The principle of order and subordination will then appear, in a two-fold sense, to have been violated.

In examining this question, but certain beforehand of the result, I shall first observe, that, in England, there is but one single executive power, and that, till the existence of our legislators, no one had ever supposed that it could be differently constituted, whether it was, as in a monarchical government, con-

fided to the king, or, as in a republic, placed in the hands of a collective assembly, chosen by the majority of suffrages. The legislators of France have visibly departed from this principle of unity, so necessary to the action of government ; for in reality they have divided the executive power among all the provincial councils, which, under the name of departments, districts and municipalities, have been established, and they have attached these councils to the authority of the prince, by a thread so subtle and so slender, if I may so express myself, that the supremacy of the monarch is nothing more than nominal.

Let us examine the particular consistence of this series of powers distributed over the surface of the kingdom. The first in the order of the constitution, is that which is styled a department, and the deputies of which this council is composed, like the members of the districts and municipalities, owe their election to the sole suffrage of the people :

people : the monarch has no sort of concern therein, and even the form of his approbation is not requisite. Thus, from the first moment of the existence of these deputies as an administrative body, they feel their independence of the royal authority : and as, in the exercise of their functions, they act in a collective capacity, this circumstance renders them less accessible to the empire of the imagination, and the respect which the majesty of the throne formerly inspired. In short, they understand that the monarch has no longer any recompense at his disposal ; and the daily publications inform them of the sort of familiarity which each may be allowed to adopt in its intercourse with government. Meanwhile, they have been rendered absolute depositaries of functions of the first importance. To them belongs the assessment of such taxes as are in their nature direct ; they superintend the collection, decide upon the complaints of the persons assessed, and upon every kind of re-

mission which it may in any case be proper to grant ; they possess the nomination of the treasurers and receivers, who are subjected to their orders ; they regulate the public expences within the sphere of their authority ; they draw for the necessary sums upon a fund which is entirely under their superintendence ; and it is in the same manner that they receive the appointments and gratuities annexed to their places. It is their business to watch over the state of repairs in high roads, public edifices, hospitals and prisons. All undertakings of an extraordinary nature, within their geographical limits, are subjected to their orders. In fine, the supreme police is added to their other powers, and is exercised by them, either directly or indirectly, through the medium of subordinate authorities ; and in support of their power, they are authorised to call in a certain species of military, the nomination of which is vested in them, and even, if it should be found necessary, to claim
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the interposition of the military of every description.

Let us now consider the thread which sustains their power to that of the monarch : A law which has declared the king to be the supreme head of the general administration ; a law which has told the departments and districts that they were to exercise their functions under the superintendence and authority of the monarch ; a law which gives the king the power of annulling, by proclamation, such acts of their administration as are contrary to the legislative decrees or the orders he has transmitted to them ; a law—But what is a law without the union of all the means necessary to insure obedience ? What is a law, if it be not placed in the midst of a general system of subordination, where every requisite proportion is observed, and where the real, are so wisely combined with the moral, forces, as to concur in the same end ? In short what is a law, and what is to be expected from its

abstract empire, if we neglect to invest him who is to enforce its observance, with all the prerogatives and all the embellishments calculated to display the dignity of his rank and excite the habitual recollection of his power and authority?

No law can be more striking and venerable than that of the twelve commandments, consecrated by religious opinion ; yet, would the subordination of children to their parents be badly secured, if every thing which strikes their regards, every thing which influences their imaginations, every thing which appeals to their reason, did not represent to them in various ways the superiority of their parents, and the necessity they are under of pleasing those who can either recompense or punish them.

Had the assembly, in detaching the provincial authorities from the real direction of the monarch, constituted them in such a manner, or subjected them respectively to
such

such laws of order and equilibrium, that the regular action of the administration could be maintained, the degradation of the royal supremacy might have been justified, by demonstrating from experience that nothing had been taken from it but what was superfluous: but among the different authorities established in the interior of the kingdom, there exists an insubordination that weakens the efficacy of them all; and this insubordination flows inevitably from the nature of their organization. It is to persons equal by education, by rank, by fortune, and by the duration of their authority, it is to equals in every respect, that the national assembly has prescribed a series of alternate obedience and command, just as the accidents of a ballot might determine. Our legislators have, in every part of their system, neglected the great moral spring of political authority, that spring which compensates by its operation the natural energy of superior numbers: the consequence of this

has been, that resistance multiplies under the new system, as order and tranquillity might have multiplied. The constituent assembly has indeed issued its express orders to four millions two or three hundred thousand national guards, to obey certain municipal officers whose authority is figured by a scarf of three colours ; it has in like manner enjoined to the municipalities an obedience to the districts ; and to the districts an obedience to the eighty-three departments, who on their part are to receive the watch-word, or take their orders from the supreme executive of the state ; but in all this no thought has been taken to reinforce this subordination by sentiments of personal interest, and a graduated chain of hopes and fears ; nor is there any ascendant power, any grand and awe-giving authority to maintain, by that means, the regularity of discipline. They have indeed reserved to the king the right of suspending, pro tempore, the administrators of department ;

ment ; but it is previously necessary that others should be found to supply their place : and who will accept the office, uncertain what may be the final decision of the national assembly, constituted the tribunal of appeal, and before whom the responsible minister is bound to make his appearance. Alas ! the poor despised minister will be singularly cautious of involving himself in a quarrel of this nature, and will never express his dissatisfaction at the conduct of these administrators, except in flagrant and notorious instances of mal-practice, were it only to conceal the universal indifference with which his dissatisfaction would be regarded. It can scarcely indeed be considered in any other light than as a sort of jest, to have placed in the general structure of administration, on one side this firm and well knit contexture of departments, districts, municipalities and national guards, and on the other, with the title of supreme executive, a prince without prerogatives, a monarch with-

out majesty, and represented, in his compulsory decisions, by ministers who have themselves every thing to fear and who are incapacitated to do either good or harm ; by ministers, upon whom every one performs his noviciate of heroism by allowing himself to speak of them, first with trifling and neglect, and then with insolence and contempt ; by ministers, upon whose behalf they have generously composed a penal code, describing in delicate language the various punishments that may be inflicted upon them, imprisonment, irons, the rack *, civil degradation, preceded as I imagine by the pillory, and who, in the mean time, are disciplined to endure their future fortune by the unintermitted and systematic disdain with which they are treated. And yet it is these very men, the perpetual butt of criticism and ridicule, who are expected separately, for they are not allowed to

* *La gêne*, a sort of iron yoke placed on the neck.

act in a body, to counterpoise this formidable chain of petty political powers, whose strength of resistance might have alarmed Louis XIV. after sixty years of sovereignty and glory. How absurd a contrast ! How well in this new political legislation is the principle of a balance observed and maintained ! The remedy will be, for the national assembly to lend its support to the administration, and this very support will render still weaker the intrinsic authority of government.

In this place I hear myself interrupted by the pamphleteers of Paris, the orators of the assembly, and even the ministers themselves. You may criticise the constitution, say they, as much as you will, but under this constitution every thing would be marvellously well, if you were but willing to obey it. My friends, you are perfectly in the right ; but deep politicians like you ought to know, that if obedience be the pillar of social order, the inclination, the necessity to obey, must be the
result

result of that order. Obedience is a mean by which great ends are effected; the obligation to obey must arise out of the plan of the general designer. Be so obliging as to attend for a moment to this distinction. Perhaps it is right I should speak still plainer; and I say, that a young man, just come from college, might draw an admirable system of government, a system to which it would do one's heart good to belong, if you would only take care that the people should implicitly obey the laws which this young moralist and philosopher should dictate. It is in this very point, the generation of obedience, the combining the necessary means to insure general subordination, without despotism and tyranny, that the whole science of civil policy consists; this is the gordian knot which legislators in all ages have attempted to solve. When therefore, in order to justify the epithet of sublime, so ridiculously bestowed upon the constitution, you hear it said again and again, in the august

assembly

assembly of the national representatives, that with obedience this constitution would be perfect, you hear from the august assembly of the national representatives an identical proposition without a meaning.

In enumerating the different kinds of resistance to which the action of government, as it exists at present, is subjected, we may mention that multitude of authorities dispersed over the kingdom, authorities not established by the constitution, but the result of its imperfection. It will readily be perceived that I refer to those clubs which are become so famous both on account of their extensive affiliation, and their singular interference in public affairs. Our first legislators wished to suppress the influence of a society of this nature which began to incommode them; but they thought of this when it was too late, and hereafter there will only be remembered the countenance which was long given, by the principal members of
their

their body, to a dictatorship of which they had themselves been the authors.

To this picture that has no model, this heterogeneous mass of authorities, let us add the immoderate use of petitions, amidst a people who are now all philosophers, all familiars, all equals ; let us add the liberty of the press, restricted by a single article of law, which may in a thousand ways be evaded ; let us add the farther liberty of giving speech to the very walls, by covering them with every sort of placards, some not exceeding the limits of moderation and decorum, others pervaded with all the licentiousness, inevitable where the police of a kingdom is under the continual operation of fear ; let us add the general relaxation of manners and that emancipation from every sort of respect, the natural consequence of a systematic equality : let us add to all these circumstances the political independence introduced by the constitution, and we shall

shall find that a continual resistance is hereby opposed to the establishment of order, and the regular exercise of the supreme authority.

In fine, and this last reflection is of all others the most disconsolate, there is a species of irregular authority which has risen up in the midst of us, and has justly been made a subject of complaint, which is nevertheless perhaps an indispensable ingredient in a constitution that does not include in its nature any spring of motion: such a government cannot be maintained without passion, and whenever this passion shall subside, the French constitution will fall into decrepitude, just as the human body appears destitute of motion, and life when the unnatural activity of a fever has subsided.

I would now, with the actual state of the administration of France, compare the institutes of a nation, which, though its love of liberty be ardent, and though it has twice within a century imposed conditions on a new dynasty

dynasty of kings, invited from the continent into its island, has never lost sight of that civil and political harmony, which secures the tranquillity of the state, and gives to the laws the necessary vigour, for insuring to all classes of citizens the happiness that is the object of their social union.

I have already observed, that, in England, there is but one single executive power: and this unity has not only been determined, as in France, by certain legislative phrases, care also has been taken, in regulating the exercise of that power, firmly to maintain a principle, of which the importance was universally acknowledged. The laws, once concerted with the wisdom and maturity naturally to be expected from the union of three wills, the care of executing some, and of enforcing the observance of the rest, is confided to the chief of the state, and the constitution has neither established a division of this part of his authority, nor provided against it any resistance. Let us look,
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for example, to the assessment and collection of taxes. It is not by a long chain of deliberative councils, elected by the people, that the monarch acquits himself of his functions relative to this important branch of the public administration. A board of treasury, instituted by the king, of which all the members are nominated by him, and removable at his will, conducts, with his tacit or formal approbation, the whole business of the finances. A prince cannot do every thing himself; but when the agents who execute the duties of royalty are chosen and delegated by the monarch, the unity of the executive power is in no respect violated.

The commissioners of the direct taxes, as the land-tax, the customs and excise, as well as those of the indirect taxes, are chosen by the board of treasury, and the nomination of receivers, and of all the subordinate agents depends equally on its authority. Refusals of payment, and other contentious opposition experienced

rienced by the collectors, are made cognizable in the first instance by a justice of peace, an officer of royal investiture ; with the right of appeal to the court of exchequer, the members of which, not removeable at pleasure, have been raised to their appointment by public esteem, and the nomination of government ; and lastly, it is the sheriffs, a species of public officer appointed by the king, who are nominated by the board of treasury to direct the execution of these judgments. Thus the authority of the monarch appears in a manner more or less direct, through all the details of this capital article of public administration, the collection of the national revenue.

We equally find the traces of this authority in the dispositions adopted by the English nation for the maintenance of civil order. The functions of police are confided to the justices of peace, which justices, as I have already said, derive their appointment and functions from government. The justices of peace appoint
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the constables, a sort of inferior officers of police acting under them. Finally, the twelve judges of the kingdom, whose office it is to direct the juries, as well as, when the juries have decided upon the nature of the case, to declare the sentence of the law respecting it, are all appointed by the monarch.

There is beside in each county a lord lieutenant deriving his appointment and functions from the prince. One of his functions is to command the militia when they are assembled, and attend to the regularity of their organization. The officers of this corps, a corps destined to the preservation of internal peace, must have a certain qualification, proportioned to the ranks that are to be occupied, of from fifty to four hundred pounds per annum landed estate. The king chuses the principal of these officers, either by express nomination, or by his approbation requisite to the nomination of the lord lieutenant.

In short, we do not find in England a mu-

municipal body in every village, a body deliberating and deciding without possessing the necessary information for acting in harmony with the general administration. Yet this is what has been invented for France, where we see no less than forty-four thousand conventicles, invested with municipal authority, and which form so many links in the vast chain of government.

The cities and boroughs of England have alone municipal officers, and these officers are nominated by the people ; but their functions, as I have already described, are very different from the functions of police, which devolve on the justices of peace ; and they are the justices of peace, and not the municipal officers, who, in case of popular commotions, are empowered to call in the assistance of the military, and to warn the people, by reading the riot act, of the dangers to which they will be exposed by the vigorous exercise of the law. These justices of peace, uniformly chosen from
among.

among citizens of the highest estimation, are numerous in every county ; so that there is no necessity, as in France, to confide the maintenance of order, in any part of the country, to the municipal officers of a village, to officers obliged to resign their places after two years apprenticeship.

The cursory views I have given may suffice to show what means the English nation have employed to facilitate the action of the executive power ; and yet, notwithstanding all this, it is so far fettered as to be able but very imperfectly to preserve the public order and tranquillity. Its task would be still more difficult, and its success still more precarious, if the people of England were less happy, and if those contending principles, those various centres of resistance, which agitate us in France, existed in that country.

As an instance of this we may observe that, in England, the very arms of the militia are deposited in a public magazine, and that no

individual is permitted to have a musket in his own house, without an express licence, at the price of a guinea per annum*.

The liberty of the press also, partly by the express letter of the law, partly by the vigilance of the officers of justice, and partly by the empire of reason and good manners, is confined within such limits as to prevent the fatal excesses of which we are witnesses.

The idea also, as perilous as it is extravagant, of a daily communication of the patriotic and the designing with the lowest classes of the people, by means of hand-bills pasted up in

* The author is mistaken ; every Englishman has the same right to have a musket in his house, as a lock or bolt on his door. There is indeed a law, and to this Mr. Necker probably alludes, that will not allow him to employ that musket, even in his own field, in the destruction of game, without an express license, at the expence; not of one, but of three guineas a year ; and this licence only exempts him from one penalty, and leaves him exposed to another, unless he possess landed property to the amount of a hundred pounds per annum.

the streets, is absolutely unknown in England, or indeed in any civilized country, and probably would meet with a very ill reception. But in our new political system, it has been laid down as a principle, and built up as a maxim, that that part of the nation which is destitute of all instruction, and condemned by its indigence never to acquire it, is capable of understanding all political questions, and has the faculty of distinguishing truth from the most specious falsehoods, a faculty which is so rare even among the most accomplished of mankind. Base and unworthy flattery, more frontless and extravagant than the flattery of courtiers themselves ! It will hereafter be seen, that, notwithstanding the establishment of primary schools, it is more easy to mislead the people by an incendiary phrase, than practicable to recal them, to reason by the methodical addresses of the legislative body, or the homilies that are issued from the offices of government.

In fine, they are equally unaccustomed in England to the immoderate use of petitions and the tyrannical domination of republican clubs. They have there thought, and with truth, that liberty is of all moral ideas that the scale of which is most susceptible of variation, and that, accordingly as we fix it high or low, the nation itself will be happy or unfortunate.

CHAPTER XVI.

Military Force.

IN the prosecution of my plan new proofs of the truth I have undertaken to investigate continually strike me, but at present an objection occurs which I think it right to resolve.

The kingdom of France, on account of its central and mediterranean situation, is under the necessity of keeping up a more considerable standing army than England; and as the monarch may make an ill use of the military force, of which the constitution has declared him the supreme head, it is asked, if the legislators did not act wisely in counterbalancing this inevitable danger by weakening all the other branches of the executive power.

Such is the simple statement of the difficulty I think myself bound to obviate ; and in order to this it will be previously necessary to call to mind a few primary and fundamental ideas.

In forming a social compact, the end men had in view was not the obtaining a system of liberty, that should be complete in all its parts, as well as secure from every imaginable accident. Had their ambition been thus limited, had this been the sole object of their wishes, they would have continued, what they originally were, hordes of savages, without a chief, except at intervals, and capable whenever they pleased of emancipating themselves from this transient authority. But in proportion as they perceived the benefits to be derived from industry, and the exercise of their mental faculties, and particularly as they felt the delightful experience of this, the idea of laws of justice were suggested to them ; and to maintain those laws against the invasion of personal interests
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and hostile passions, a political force was found necessary, a force, that, placed in judicious hands, might preserve social conventions, and assure to every individual a security, naturally become, since the acquisition of their new fortune and new ideas, one of their dearest wishes. Meanwhile, in resigning their original independence, mindful of the various satisfactions that accompanied it, they, no doubt, were anxious to limit the sacrifice of their liberty, and accurately proportion it to the precautions which the maintenance of order and the safety of the state demanded. Usurpations, conquests, abuses of every kind, and the complication which time has introduced into human associations, have frequently obscured the first principles of political union ; but these ideas have undergone no variation, and are found to exist in their primitive simplicity, whenever circumstances lead nations to study them anew, or whenever, called to reconstruct the tottering edifice of their felicity, they seek a fixed point
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which may serve as an anchor to their wandering thoughts and their uncertain speculations.

From these reflections it follows, that the absolute sacrifice of order to liberty would be deranging the natural series of social ideas. It would in a manner be to make the human mind perform a retrograde course, and to return insensibly to the savage state, by the same paths through which it had arrived at civilization.

Let us also observe, that the savage state, in the midst of society itself, that state which is represented by anarchy, is of all conditions the most unfortunate. Barbarism and ferocity can only be softened in their effects by the distance at which men live from each other : but when their habitations are contiguous, when they reside together, and at the same time suffer their claws and their talons to grow, the situation becomes dreadful, and the isolated life of families and individuals in the

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midst

midst of woods and forests is infinitely preferable.

Every thing then leads us to conclude, that public order, the guardian spirit, the conservator of the moral world, is the first condition of every social institution. This principle should ever remain unalterable amidst the arrangements of legislators ; but at the same time it is expected from their science, that they should be able to reconcile it with all the other blessings of which men are desirous, or of which they know the value.

Among these blessings, liberty will, no doubt, be of the first rank ; but it requires, more than any other of our enjoyments, to be united to ideas of order and subordination, since, in the midst of a society without discipline, we perpetually see the most despotic authorities spring up on every side.

Why should we dissimble it ? This union of liberty with public order, can never be perfectly cemented but in countries, which,
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from their diminutiveness or their situation, can dispense with a standing army ; for this army is a moving force whose direction may derange the equipoise established by the legislator. But of all political projects the most inconsiderate is that of wishing to remedy the inconveniences, or possible abuse of such a force, by depriving the executive power of the necessary means for preserving interior order, insuring public security, and watching efficaciously over the maintenance of liberty itself. It is creating a certain evil, an evil that will be felt every day, for the sake of avoiding an uncertain danger and which may be more effectually guarded against by very different means. By the same system of precaution, if we had the government of the world, we should modify the elements so as to incroach on their salubrious influence and impregnating qualities, lest the vapours, which by the process of nature would follow, should
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produce in the sequel some terrible thunder storm.

Is not the responsibility of ministers and other agents of the executive power, a real security against the danger of a standing army? Is not the constitutional obligation, imposed on all military commanders, of never employing an armed force in the interior of the kingdom but at the requisition of a civil officer, another admirable precaution against the same danger? Is not the law by virtue of which no supplies can be raised without the consent of the representatives of the nation, a sufficient provision against any ambitious projects of the monarch? And if the legislative sanction necessary to the collection of the taxes, instead of being renewed in each succeeding session, was extended over the space of a year, if the sanction was accompanied with a regular and visible solemnity, and if the mode of doing it included the announcing that the confidence in the constitutional

powers was still entire, the effect would be equally salutary and the precaution less violent and disorderly. In like manner no inconvenience would result from the adoption in France of another constitutional statute of England, which makes the validity of martial authority, and all laws relative to the discipline of the army, to depend on the passing annually an act of parliament, known by the name of the Mutiny Bill. I will go farther, and will assert, that, rather than sacrifice the prerogatives necessary to the civil action of the executive power, to the mistrusts and fears excited by the existence of a considerable standing army, it would be better to reduce the extent of that army : for the loss may be supplied by means of the militia ; and with a prudent conduct towards foreign powers, a kingdom such as France will never find its tranquillity in danger from their enterprises : but nothing can supply, in the interior of a vast country, the annihilation or the extreme
reduction

reduction of a power, whose function it is to protect the property and personal safety of the citizens, and to watch unremittingly over the maintenance of public order.

Meanwhile I must be allowed to doubt, whether, exclusively of the above important considerations, and attending only to the interest of liberty, it would be politic to balance against the necessity existing in France for a standing army, a degradation and contempt thrown upon the executive power and the majesty of the king. Let us attend for a moment to the characteristic features of an army subjected to the yoke of discipline, features that so strikingly contrast with the philosophical principles of government. In the first place the whole secret of military operations lies in unity and rapidity of action, and unity and rapidity can only flow from the most absolute obedience to a will that may not be questioned. It may be depended upon that soldiers will always entertain a strong admiration

admiration of the principle, by means of which the most powerful force is conducted by the simplest spring. They are the more attached to this idea, because the employment of force is their particular trade ; and they will always find themselves in some sort embarrassed when obliged to connect these ideas with the freedom and independence of political liberty. How can it be expected that, when they enter the clubs, they should be impressed with the mixed sentiments of a citizen ; and, when they return to the camp, return to the idea of an unlimited authority ? The Romans indeed, reasoning like citizens in the forum, were at the same time the most rigid observers of military discipline : but let it be remembered that, previously to their going out to war, they entered into a solemn engagement implicitly to obey the commands of their general ; and we know also the deep impression which the religious obligation of an oath made on their minds. This nation,

to renowned, existed I suppose too early in the infancy of the world, to be able to understand the great principle of absolute equality and its particular utility in a vast empire.

To return, I will confess that, for a time, it will indeed be possible to introduce the soldiers in the midst of our clubs, to make them share for a moment the ardour of our ruling passions; but when these passions decline, and when men return once more to borrow their feelings from their situation, either we shall have no army able to cope with foreign forces, or this army will be circumscribed by the rules of discipline. Nor can it fail to happen that discipline, which presents at every turn the notions of rank and ascendancy, will sooner or later bring back their attention to the most striking and splendid of all authorities. The state of obedience, when our obedience can neither be reasoned, nor reasoning, is in no way softened to the generality of mankind, but by respect and ve-

neration for him who commands. There will therefore be always a secret sympathy, a kind of magnetism, between the spirit of an army and the spirit of a monarchy; and it is in vain that we may expect, by stripping the monarch of all the appendages of his dignity, to turn aside his thoughts from the only mode by which he may one day restore himself to his original authority. The necessity therefore of a considerable standing army, so far from offering a plausible motive for rigorously restricting the civil prerogatives of the monarch, enforces a proceeding diametrically the reverse; for the existence of such an army, and the habitual discontent of one of the powers of which the government is constituted, will ever badly assort and will necessarily be attended with danger. We must obviate one of these circumstances, when we cannot dispense with the other; and I have shown, from the example of England, that neither the welfare of the state, nor public liberty, nor

general

general happiness required that we should diminish, as we have done, the rights, the prerogatives and the dignity of the throne. It is by having over-looked this truth and having followed directly opposite principles, that the national assembly has been the author, so to speak, of its own alarms, and has voluntarily engaged in a system of precautions, in consequence of which it finds itself under the daily necessity of making new sacrifices.

It is not with chains, the offspring of mistrust, that the different branches can be maintained in their constitutional limits; or if it be, they must be so interwoven and cross secured by each other, as to deprive administration of activity and motion. Why have we not thought of employing that great and admirable chain, contentment; a chain so flexible; a restraint so pleasing, as to retain every one in his place, without fettering the energies of any? The English have given us

a specimen of this species of government : policy and morality have equally recommended to them this well adjusted proportion, by which the king, the people, and their representatives are each satisfied with his share of rights, functions and privileges. Admirable harmony, which at once conceals and displays all the wisdom of the legislator !

A very simple reflection might have suggested itself to the mind of the authors of the French constitution. Public opinion had for a long time acquired, under the ancient government, so much vigour and energy, as to be capable of itself of restraining all excesses of authority. What ground then would there have been for reasonable suspicion of the designs of the monarch, if this power of opinion had been reinforced with those political precautions that would not have diminished the activity of government ? All ranks of the people, with the most perfect sincerity, would

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have stood at the rampart of a liberty, at the shrine of which order had not been blindly sacrificed ; and the admiration of Europe, the consent of nations, would have formed a wider and impregnable fortification for the defence of our happiness.

CHAPTER XVII.

Of Executive Power as connected with Liberty.

NO nation has shown itself more constantly jealous of its liberty than the English, and this is not with them any novel passion; they fought for it when the other nations of Europe did not so much as consider it as a good, and their success in this noble ambition history has rendered immortal. The efforts and triumphs of despotism have taught them to know the supports of which they have need, and to preserve with safety the rights that were in contest; and the revolutions which have happened, between the signing of Magna Charta, the statutes of Edward and the Habeas Corpus act, have but served as lessons to instruct them in the science of freedom. They
then

then only wanted opportunity and power to consider in times of tranquillity the remaining imperfections of their government. This favourable opportunity presented itself after the flight of James II. The representatives of the nation, previous to raising a new king to the throne, made, in a certain sense, a revision of the constitution; and the bill of rights, that celebrated act of the revolution in 1688, was the completion of English liberty. In fine, as if it were still not enough for the political fortune of that nation, to have applied the remarks of a succession of ages and the lessons which their own history afforded in one harmonious combination of the governing powers; a particular incident further gave the English the means of examining, with reflection, whether nothing had escaped their restless attention; and, after twelve years experience, they once more as it were revised their work. Queen Mary died without leaving a successor, and the princess Anne had just lost her re-

maining son. The English then employed themselves to regulate the right of succession to the crown, and thence took advantage to add certain clauses to the convention of 1688, which were favourable to national freedom, of which a solemn act was passed in 1701 ; a remarkable æra in the annals of parliament. Since this epocha the English have imagined they enjoy all the happiness which liberty can procure, and have never spoken of their government without testifying by some epithet the love which they feel for it. *Our happy constitution* is their habitual phrase, their familiar expression, not only among their representatives, but in their distant provinces and in their towns and villages. Yet to this nation, enlightened by events so numerous, and whose constitutional vigor is fortified like forest oaks by winds and beating tempests, to this nation have our politicians of yesterday, our cold theorists and our tumultuous legislators, opposed their hasty and recent innovation. May
 heaven

heaven eternally preserve that nation from a like change ! To me it would seem a crime so much as to conceive the design. You, who are the ardent propagators of novelties not yet proved, respect this cradle of liberty ; respect the country in which freedom took birth, the country destined perhaps to remain its sole asylum, if ever your own exaggerations should drive it from among you. And you, generous nation, you, our first instructors in the knowledge and love of liberty, continue long to preserve the good of which you are in possession. May the freedom you enjoy be ever united to your grand moral qualities, and may it ever be as truly defended by your prudence as by your courage. Alas, the abuse of which we have been guilty, will perhaps be more dangerous to freedom than our long indifference. To you it belongs to maintain its renown, and religiously to guard that sacred fire which, among us, has but become the instrument of conflagration.

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It may however be asked, whether, since the passing of the bill of rights and the act of 1701, the English have not had cause to repent their forbearance, in granting so many prerogatives to the executive power, and whether that power have not employed corruption to narrow the national freedom? The attempt would have been vain; for that freedom is under the guardianship of both houses of parliament, the peers and the representatives of the people. Nor can any law pass without the consent of these branches of the constitution, as well as that of the monarch; and were it possible that all three should agree to effect some essential change in the constitution, they would have to combat the opposition of the whole nation, which they would never dare to undertake. Beside, I have already observed that the perfection of the English constitution does not merely consist in this just combination, which secures liberty without rendering government inactive, it has the
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further peculiar merit of attaching to itself all the powers and orders of the state in support of the established government. One of the best securities of the constitution is the happiness of all the contracting parties; a happiness which is not speculative, is not theoretical, but has been submitted to the proof of experience, that grand test from which reason only can acquire new force.

Some will perhaps alledge, that, since the year 1701, changes have been made in the laws of England, the motive of which may relate to the influence of the crown; from which it may be inferred that this influence is too extensive.

The two remarkable examples cited in support of this reasoning, are, first the lengthening of parliaments from three to seven years, and next the power granted to the king of subjecting military offences to martial law. But if these alterations tend to promote the good of the state, and especially if they do not infringe on freedom, it is not well founded to
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suppose them proofs of the dangerous ascendancy of the royal prerogative.

It would be difficult to determine whether the most rational duration of a parliament would be five rather than six years, or six rather than seven; and I have already shewn in a preceding chapter the principal inconveniences attendant on the too frequent renewal of legislative assemblies. Those reflections might here find their proper application, but that it would be wrong to repeat what has so recently been said. Neither is it the power of continuing the same parliament for seven years which is offensive to freedom; it is only the abuse which the king may make of this prerogative. But if liberty in England be sufficiently guarded by those precautions with which it is environed, the privilege of dissolving parliament, which has been granted to the king, does but favour public order without affording cause of uneasiness.

Let us however remember that the long
duration

duration of parliaments in England could not be supported, if the possession of property were not necessary in order to become a member of the house of commons ; for otherwise the number of candidates, as in France, would be so great, that their impatience would never support this tardy suspense ; they would wish more frequently for the chance of being nominated the representatives of the people. Hence it may be conceived how a vain nation, thrice as populous as England and Scotland combined, is inclined to think an interval of twenty-four months too long. The patience of French vanity is visibly exhausted ere these two years are concluded ; and thus among other ill consequences, resulting from that law of the constitution which suffers men without property to be elected deputies of the national assembly, must be enumerated the frequent renewal of these assemblies, which is the necessary consequence of the multitude of candidates.

I return to the particular subject of this chapter.

The act of parliament, which, in the year 1718, invested the king of England with the necessary authority for subjecting military crimes to martial law, cannot, in the name of freedom, suffer blame. The result was nothing more than greater subordination in the army, and freedom cannot be found in a relax of discipline. Such an idea would indeed be a strange one, since it is discipline which prevents the abuse of force. And suppose jealousy were conceived from a standing army, it would be better, in a free country, to diminish its numbers than to enfeeble its action.

I have referred to the two bills which, in a remarkable manner, have augmented the royal prerogative posterior to the bill of rights and the act of 1701. I now ought to mention, that, since the same æra there have been bills evidently unfavourable to this prerogative. I will cite that by which all persons, in possession

sion of offices under the crown, which have been created since the year 1705, have been disqualified for members of parliament; and the bill under the present reign, by which all excise and custom house officers, who are in the nomination of the government, have been deprived of the right of voting for members of parliament; an act which evidently restrains the influence of the crown. The true increase of this influence should be attributed to the progressive increase of taxes, expences, and colonies; circumstances which, by multiplying the branches of administration, have increased the number of places in the royal appointment. But it has not hitherto been proved, that the combined prerogatives of the king have given him the power to infringe, in any respect, on the national franchises and the laws of the constitution.

These laws are more favourable to freedom than ours; yet public order has not been sacrificed to them. In England, as in France,

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we see a national body in which all laws originate, which determines all taxation, fixes all expence, examines all accounts, and which annually renders a public statement of the finances : we there see ministers responsible to the nation, and liable to be impeached by this legislative body ; we there see the army permanent no longer than it shall please this house ; and the liberty of the press extended to every degree short of being the foe of moral order. Personal freedom is there secured by a constitutional proscription of all imprisonment, except according to law. We there find the salutary establishment of juries applied not only to criminal but to civil prosecutions. In fine we there meet with every essential basis of civil and political freedom, such as we have taken them in great part from a nation worthy to serve as an example to others. But this nation has raised two ramparts more than ourselves in favour of that freedom of which she is so jealous. One is the constitutional

statute,

statute, in virtue of which the discipline, and in some manner the existence, of the army, are necessarily maintained by an act of parliament which must be renewed every year. The other, truly precious, because it is in continual use, is the right granted to every man arrested, or unjustly detained, to sue the civil officer for reparation who has abused the authority under which he acted. There is no French citizen who would not exchange for this single rampart of English freedom, half the advantages of our constitution; for there are at present in the kingdom so many powers invested with the right of imprisonment, and which is exercised on occasions so trivial, that, notwithstanding the old name of prison has been exchanged for the gentle but new expression of *lieu d'arrestation*, the locks and bars remain just as they were, and the people are terrified at the facility with which departments and districts, municipal officers, sections, justices of the peace, and others, seize

on the persons of individuals, and prolong their captivity, without being themselves exposed to any personal danger.

If after these various reflections, which no doubt are capable of being farther extended, it be asked—Is it not true that the national assembly has invented for the French, a freedom superior to that enjoyed in England? we must reply, that this pretended advantage, this apparent triumph, is entirely composed of the spoils of the executive power and the remains, as I may say, of public order. We are obliged to receive as an increase of liberty, the absolute reign of the lowest class of the people, and the removal of all authority; we are obliged to receive as an increase of liberty, the disregard of all decorum, and a release from those ties which were most necessary for the support of domestic manners; in fine, we are obliged to receive as an increase of liberty, all the mockeries made of ministers, and all those legislative acts which have despoiled the
throne

throne of its support, or stripped the monarch of his majesty : an increase of liberty like this has but overthrown the balance of government, a balance the most important object of whose institution is the support of liberty itself.

Continual endeavours have been made to picture the defeat of the executive power, as a victory gained by liberty. Nor was this conduct destitute of personal motives. The English having discovered and laid with a firm hand the corner stones of freedom, it was necessary, in order to surpass them in fame, to open a field for glory bordering upon this. It is easy to confound the degradation of the executive power with independence, and independence with freedom. And this degradation presented itself as the means for acquiring splendor absolutely new, and opened a career to the national assembly untrodden by all preceding lawgivers. But wise men are not to be so misled. They will perceive that

the English have applied themselves to support the activity of government, and prevent at the same time its abuses; while we, wanting address, and blindly striking at every thing, have destroyed the power of administration, that we might not be exposed to its mistakes.

I do not therefore know why the national assembly has been reproached with usurping the functions of this power; for it is absolutely necessary that the only real force established by the constitution, should be put in action, and exert itself wherever there is danger. Government must proceed; obstacles will arise, and difficulties must be removed; and to use a word, which is become constitutional, as there is in administration always *urgency*, the public business cannot wait till the executive power shall have acquired respect and means of acting. Therefore the national assembly, though it should have no such desire, would be obliged to act and afford aid. In vain may ministers cry aloud—*Efficacy to the law,*

law, Respect to the law, Homage to the law.

Their too feeble voice would be ill understood, amid the noise of departments, districts, municipalities, national guards, and a whole people put in motion by the word equality.

The national assembly ought not therefore to be blamed, when it is seen to interfere in all things; the fault is in the lawgivers who laid it under the necessity of exercising such power; it is that incomprehensible constitution which is blame worthy, and which has placed, on one side, a single permanent assembly, the numerous members of which, limited to an existence of two years, stand in need of the multiplied labours of the legislative body, that each may play his part; and on the other side an executive power, without prerogatives, without the means of effecting either good or ill, while it is stripped of all exterior splendor, by changes of every kind, which have deprived the throne of majesty and its ministers of respect. Such arrangements could

not but produce the very effects we witness. What forgetfulness, or what mistake prevented this from being foreseen !

In like manner, after having led the calm and gentle waters of a rivulet, without depth or descent, near an impetuous torrent, uncertain in its course and falling from the mountains in gigantic waves, it might perhaps be supposed, that, by the aid of some magic words, these different streams would ever remain separate.

There exists, no doubt, in the book of the constitution, two powers entirely distinct ; but the want of proportion in their respective strength, must inevitably lead to confusion ; and this want of proportion became inevitable, when our lawgivers, as I have shewn in the beginning of this work, had so long forgotten both the executive power and the rank it ought to assume in the forming of the constitutional articles.

It is however a maxim, become almost
 proverbial,

proverbial, that the union of powers is an attack on the principles of liberty. It is indeed often repeated in a thoughtless manner by those who can give no reason for what they say. But I will not repeat that which all intelligent men already know. I will only remark, that the chief objection made against the old form of government, related to a union of powers which centred in the monarch ; yet the obstacles he had to encounter, in the inconsiderate exercise of these various powers, were public opinion, the prevalence of manners, the opposition of parliaments, the rights of provinces, and, for sometime past, the well founded resistance of provincial administrations. No doubt the immoderate power of an assembly, composed of national representatives, is not so formidable as the despotism of an individual ; but it has inconveniences peculiar to itself, and which ought to be particularly felt by certain characters.

A numerous assembly when it exercises the

executive power, can never act by insensible advances ; all which is mild, indulgent, or accomodating to the foibles of men, will ever appear to it effeminate ; and if that assembly be composed of legislators, their habitual course of thought will bring them back to general and decided principles. This spirit is most conspicuous in such an administration, in the mode and rigor of its punishments. A collective assembly, obliged to renounce that foresight which prevents faults, that penetration which discovers their origin, that mixture of indulgence and firmness which is better adapted to men than to theory, and that prudence which artfully wrestles with difficulties ; such an assembly, unacquainted, by its legislative capacity, with that temporising and modification, which are so often necessary in government, is continually obliged to exhibit itself armed with the exterminating sword : yet the union of severity and power, though it may not be despotism, presents so lively an
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image of it, that noble minds sometimes find it difficult to support the spectacle.

There is another consideration which obliges a large assembly to seek for every means of action in the sensation of fear; for it can neither afford hope, nor promise gratitude. Yet these are the only emotions which influence, with mildness, the conduct of men. An assembly, renewable every two years can neither observe the successive efforts, nor remunerate the zeal, nor excite the infant talents of individuals. I deny not that it has many rewards to offer, but candidates for them must arrive at a certain and no common degree of perfection, before they can be perceived by, or obtain distinction from such an assembly; at which time public opinion, which fails not to discover high excellence, has anticipated its applause. Beside, though popular favour, such as is mingled with sentiments of respect, receives additional value from the free and voluntary approbation of a national assembly,

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it is very different with favours of another kind, and especially with pecuniary rewards. Yet these alone can maintain the habitual motion of government ; they too nakedly announce, on the part of those who grant them, an air of superiority ; and so far as relates to collective numbers, men entertain less affection for an assembly of benefactors, than a multitude who unite in applauding.

In fine, we may be assured that a legislative assembly, whether from the spirit inherent in its functions, the abstract character which it insensibly acquires by its habitual examination of general questions, or the simple progress of opinions and sentiments as existing in large bodies of men ; such an assembly, I say, never can conduct, with mildness and moderation, that part of public business which is understood by the word government. It will soon come to hate the temporising of which it is itself incapable ; and it will then incessantly be told of oaths, of public accusers, high national

tional courts, responsible ministers, dismissal from office, death or ignominious punishment, and every other invention of revenge. All the stores of tyranny are displayed to its view, to which it finds itself obliged to have recourse, not from the love of despotism, but to provide itself with the only instruments it can employ, when it quits its legislative functions to seize on those of government. Yet benevolence and wisdom are equally offended by this proceeding; and that freedom of sentiment which ought to reign in all hearts, is often obliged to be sacrificed to an ideal freedom, which, having no central point, fills an indefinite space in the fantastic declamations of orators and writers of romance.

There is no real, or at least no certain freedom, if there exist in the state an authority without counterpoise: and what power can be the counterpoise to the power of an assembly, which combines in itself, not only every legislative right, but every dominion it shall

please to assume, as well over judiciary functions, as over external and internal administration? What power can be a counterpoise to the independence of an assembly, which, avoiding only those few faults calculated to excite public enquiry, finds itself superior to censure, and which, by continually calling the attention to new objects, suffers it not to turn on the oppressed man for more than a day, and seems to stifle by beat of drum his murmurs and complaints. In fine, what limit can be fixed to the daring of an assembly, which, being renewed every two years, and having accomplished, unrestrained, its momentary reign, far from being subject to any responsibility, suddenly disappears from the scene, and, like lightening, disperses itself in invisible particles?

Who but must be terrified at the authority of an assembly, which, in a moment and without appeal, decides on the honour, the fortune, and the freedom of citizens; and which,
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proscribing by a small majority of votes an enquiry into all opinions pre-supposed contrary to the sentiments of this majority, thus secures, by its tyranny over the minds, its despotism over the persons of men. Who but must dread the authority of an assembly, which, on the report of one of its members, and without deigning to hear the accused, or their advocates, fill the prisons with its victims *. Who will not dread the authority of

* Thus they have lately sent to Orleans the minister for foreign affairs, on an accusation, of which no deputy could give any clear account, so entirely was it composed of subtleties. It resembles the riddle of the Sphinx and is accompanied by equal danger. The minister has not been heard, nor has the diplomatic committee: the moment appeared favourable for the ruin of a prudent man, and it was seized. Never was judgment pronounced in Turkey with so much levity. We have not, say they, passed sentence, we have only issued a decree of accusation. True; but such decrees are followed by imprisonment the end of which is unknown, and which perhaps delivers up a father, a mother, a tender wife, and a whole family, a prey to the most terrifying fears. An accusation therefore is a most severe condemnation, since the consequences are so terrible, and nothing can excuse the haste with which it is carried into effect.

an assembly, ever ready to obey popular opinions, and which afterward employs these very opinions to force the compliance of the monarch, and thus to break down the feeble mound which the constitution had raised to the omnipotence of the legislative body? In fine, who but must dread the unbounded authority of a collective being, which, passing in a twinkling from a living to an abstract nature, has no need of compassion, nor any fear for itself either of censure or condemnation? If a country can be called free, which is under the yoke of a power so absolute, in which security of person, respect for property, and the maintenance of public tranquillity, depend on the tongue of an orator and on the moment which he may artfully chuse for gaining votes; if a country can be called free, in which no balance of authority exists, where the executive power is a vain sound, where rights are all imaginary, where the opinions of the wise are no longer listened to, religion

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is impotent and manners are lawless ; if a government thus composed can be called free, there is an end to all ideas of the first principles of social organization.

Again, if the authority exercised by an assembly should release men from every other kind of despotism, still its inconveniences would not be the less felt. But this unparalleled authority is not the only one favoured by the extreme weakness of the executive power. The eighty-three departments, all named by the people, perceive each day more and more two incontestible truths ; first, that they have nothing to hope or fear from government, and that they are generous when they act with good manners towards it ; and next, that a numerous assembly, continually mutable, is incapable of watching over them with steady perseverance. Thus by merely keeping certain terms with it, they will whenever they please become absolute masters within their jurisdiction.

It will be asked, what then? They will but resemble republican councils, which govern as well as other councils. But we forget that these councils are situated near the legislative body, and in the centre of the various active and reactive forces, intended to form the complete organization of a government. We likewise forget that the authority of these councils, in small states, is at once guided and moderated by the active superintendence of the whole community.

To this the French constitution offers nothing parallel. The departments do not resemble separate states, except by being limited, and have nothing of a republican government left them but the right of election. They neither can possess laws originating with themselves, nor laws which are guaranteed by the various authorities and censors which compose the whole of a constitution, and which may be said to render the principles of order and liberty indigenous. Neither can they
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have laws appropriate to their manners and customs, nor laws calculated to give them a distinct character ; and being obliged to assume the name of some river or some rock, as the cognomen of their political existence, they have not even that species of tie which stamps a more interesting designation, and which, being applied to the citizens formerly, maintained a common sentiment among them of honour and fame in the provinces. Different indeed from the States of America, which have only brought their political interests into the common stock, they must derive all from the universal regulator of the empire, such as laws, manners, opinions, taxes, and the whole, as well as the parts, of their internal policy.

We are not however free from inquietude, when we reflect, that several of the departments, thus constituted, are at the distance of two hundred leagues from the sovereign legislature ; and we should conceive a just diffidence of their fixed subordination, were the

national assembly to persist in neglecting the active mediation of the executive power, and in discrediting the authority which ought to connect the obedience of the people with the abstraction of law. Let there be but time enough, and we shall see, that, deprived of this over-awing mediation, the progressive preponderance of a single assembly will necessarily favour the absolute empire of the administrators of departments, or the popular chiefs to whom these administrators themselves shall be subject; for they will secure themselves from every kind of individual blame, by pleading responsibility to none but that great central authority, the superintendence of which will not terrify them, and with which they will always have a balance in account.

We cannot make the tour of a kingdom like France, in a chariot with seven hundred and forty-five wheels; its pace would be too slow and too much embarrassed; more rapid motion

motion is necessary every where to maintain order and freedom.

The commencement of all disturbances, and the want of subordination, will elude the attention of a numerous assembly situated in the centre of a vast kingdom. It can neither act suddenly enough, nor discover with sufficient accuracy the leaders in guilt. It receives information when the intricacy of accidents have already obscured the truth, and when the passions have disfigured the facts and rendered testimony suspicious. Yet it will not be the less prompt to judge both men and things; and its commissioners, to whose reports alone it will listen, becoming its sole guides, it cannot, except by chance, guard itself against the highest injustice, or the most dangerous imprudence.

We continually find that the limits of the different political powers are fixed by laws, inherent both in the nature of these powers, and in the first principles of reason and mo-

reality. These no doubt can be extended, or the reverse, according to the scale of a theoretic government: such things can be effected in system, or in revery; but when the social impulse is given, and when this immense rotation ought to be self moving, the merit of proportions, discovered by a long chain of remarks, will then be perceived; and it will too late be regretted, that more respect had not been paid to experience, and that her noble origin should not have been discovered under a garb worn and tattered by time.

In fine, and this shall be my last reflection, I ask the legislators of France, from what motive, while following unreservedly their system of innovation, have they deprived the departments of the inestimable advantage of forming themselves separately, and then no doubt in more extensive proportions, into distinct states, united like those of America by a political, financial and commercial federation, of which the monarch might have been
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the hereditary chief? from what motive did the constituent assembly, having released itself from all ties, deprive the various sections of France of the inestimable advantage of each concurring in the passing of their laws, with all the plenitude of their own consent, instead of subjecting their individual accommodations to the hazard of a decision by a majority of votes given by the deputies of the whole kingdom? Why did the national assembly deprive these same sections of the right of fixing their own legislative constitution, forms of administration, order of judicature, ecclesiastical regulations, and fiscal system? Why have they not been permitted to possess each a legislative body, and to contain within themselves that balance of powers which secures order and freedom? Why have they been obliged to yield up the particular titles, in which the inhabitants formerly gloried, and which continually recalled to mind the fame of their native country or the high deeds of their an-

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cestors? In fine, I ask the lawgivers of France, what was the motive for so many privations imposed on all the ancient provinces of the kingdom? I shall no doubt be answered, the intention was, by mingling every interest, and by a more intimate federation, to secure more fully peace within and power without? But while they do well to fix so high a value on these two social conditions and political advantages, and while to obtain them they have not scrupled to demand, from every section through the kingdom, the sacrifice of their most essential interests; how could they resolve to render this sacrifice ineffectual, by weakening the power destined to be the protector of internal order, the tie of public force, and the moderator of every hostile passion, amidst an immense political society, regulated and directed by one sole law?

CHAPTER XVIII.

Whether absolute Equality be necessary to Liberty.

THE watch-word in France, at this moment, is equality ; and upon the faith of a small number of sectarians and their commentators, it is regarded as an established axiom, that without absolute equality there can be no liberty, and that this equality is the true spring and secret principle from which the articles of the constitution are to be considered as corollaries. The authors of the constitution will also tell you, if you will but listen to them, that equality was the polar star by which all their labours were guided and of which they never lost sight. That we may enter into the discussion of the subject of this chapter on an equal footing with them, it will

be previously necessary to destroy the advantage they would derive from this steadiness of opinion, this pretended accord between their earliest ideas and all their subsequent legislative reflections.

The date of the principle of absolute equality, the period when it first made its appearance among us, is not unknown, and there is a kind of artifice in the attempt to connect it with a clause in the declaration of rights which says : *Men are born and continue equal in rights*. The same phrase may be applied, with equal propriety to the establishment of an equalization of property. Moreover, when the first article of the philosophical declaration of the rights of man was decreed by the national assembly, and became the general topic of conversation, it was objected by some, that the people might construe the principle into absolute equality ; to which it was replied by others, that such an interpretation was too absurd to be apprehended.

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The rigorous principle of absolute equality did not take birth till the epoch of 19 June 1790, upon passing the decree suppressing all orders, titles and liveries. The attachment of the assembly to this innovation was at that time so feeble and wavering, that it is probable they would have modified their decree, if the king had adopted the critical memoir upon the subject which I read in the council ; and in support of this opinion I might cite the well known sentiments of various members of the assembly, ardent admirers of liberty and the constitution. Nor should it be forgotten, that when the memoir in question was made public, a committee was nominated by the assembly to revise the decree of 19 June ; but opinion in favour of this law having insensibly gained ground, the committee never sat, or at least never gave in a report, and the assembly did not think proper to remind them of their mission.

Let us farther examine, whether, anterior

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to this epoch, the principle of absolute equality, regarded as the true spring of the French constitution, had ever entered into the imagination of our legislators, or appeared in any of their deliberations. There is not a single debate in which we can find it announced, or that contains the most distant allusion to it. The proper opportunity for bringing forward a principle, without which it is now affirmed there can be no liberty, was doubtless when the constitutive articles were drawn up, articles generally known and presented to the king at the same time with the declaration of rights.

Another memorable period, when honour would have dictated to the assembly the open avowal of the principle of absolute equality, had that principle originally existed and been really the foundation on which they meant to erect the fabric of the constitution, was the night of the fourth of August; when they were so content with the sacrifices offered by the nobility and clergy, that they received
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them with the liveliest satisfaction, with loud and universal acclamation, with the most touching enthusiasm and expansion of heart, which rose to so exalted a pitch, that it was at last unanimously decreed, that the remembrance of a day so happy should be consecrated by a *Te Deum*, and perpetuated by a medal. Now I ask, had the design been formed of reducing all ranks of men to a level, would there not have been something perfidious and dishonourable in these demonstrations of joy and gratitude on the part of the commons? Ought not their language rather to have been: *Are these the sacrifices you offer us; they are not the half of what we expect?*

How many discourses also, delivered by the most celebrated speakers in the assembly, might I not adduce in confirmation of my hypothesis? But I prefer the deriving my arguments from the express words of a decree. The one in question bears the date of 11 August, posterior therefore to the period designated

signated as the æra of the revolution, and the following is one of the articles of it.

“ All citizens are admissible to employ-
 “ ments and dignities of every kind, ecclesi-
 “ astical, civil and military, no profession be-
 “ ing allowed as a disqualification.”

The concluding words of this article evidently suppose the existence and preservation of the order of the noblesse.

It would be easy also to prove, by a multitude of inferior circumstances, that absolute equality, the pretended corner stone of the French constitution, ought to be included among the principles which the assembly imbibed in the course of their deliberations, and which was conveyed to them, like a thousand others, by the tide of popular opinion.

But of what importance is its date, what signifies its origin ; let us examine the principle itself, and let us enquire whether it be really a necessary condition of liberty, as the
 multitude

multitude daily assert, without having at all reflected on the subject.

Such a doctrine can never be advanced but in direct opposition to the lessons of experience; for the example of England proves diametrically the reverse, and it might easily be shown that, in a great kingdom, it is impossible there should be either public order or general liberty with the absolute reduction of all ranks to a level.

Meanwhile it is proper to say something respecting the species of gradation indispensably requisite in a monarchy, provided that monarchy make one branch of a free constitution. It is not the separation of the nation into two orders, the nobility and the yeomanry, that is requisite in such a government; still less is it a species of nobility that might, as formerly in France, be purchased for money. There is nothing like this in England; and no other species of gradation is necessary, in a free constitution, than that of which England

furnishes the model. The whole is complete provided only a body exists, occupying a regular situation in the political order, which by its splendor may illustrate the throne, and by its importance furnish a sort of transition from the unlimited multitude of the people to the absolute and singular unity of a king and a crown. I grant that the effect of such an intermediary or middle power, derives its value merely from opinion, or, if you will, from imagination ; yet this does not hinder it from being the *fine qua non* of the respect we bear for the first magistrate of the state, a respect without which kings would be ciphers, and the genius of monarchy incapable of being maintained.

Formerly indeed, and with warlike nations living almost entirely in the midst of camps, gradation of rank was not necessary to the consideration of the supreme head of the government ; military discipline was found to be an adequate support of his authority, a discipline

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line which of all hierarchies is the strongest and most expressive. In like manner can the caliphs of the East maintain a respectful and awe-inspiring idea of their grandeur without the aid of such gradation. Shut up within their palaces, and having no communication but with their vizir or their slaves, their mysterious retirement serves to picture them to the multitude as an unknown power, which the eye is unable to circumscribe, and of which a vague imagination magnifies all the dimensions : and provided that, in those ceremonies which require their public appearance, a triumphal pomp attend them, and that, at certain intervals, their authority be announced, like the explosion of thunder, by striking acts of vengeance, the minds of the people are held in a continual state either of astonishment or of respect.

But these examples bear no relation to the temperate monarchies of Europe. It is not in the midst of camps, nor is it in the obscurity

security of a seraglio, that the supreme chiefs of such governments are called to reside. The civil administration constitutes the essential part of their functions, and they can reign neither by the sword of the military nor by a blind enthusiasm. It is therefore necessary, with us, that the authority and the magic influence of opinion, so indispensable to him who is appointed to watch over the execution of the laws in a vast empire, should be very differently secured; it is necessary that the author of such a constitution should skilfully unite to the real prerogatives of the monarch, the exterior of dignity and splendor, which can alone enable him to render those public services that are required at his hands.

After this we have to consider, whether the majesty of the throne can continue to exist, without any gradation of rank to discipline the public mind; can exist, where the king stands unsupported and alone, in the midst of an innumerable multitude of men, all of them
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making their boast, all of them fastidiously vain of their political equality.

Respect is a disposition of mind that stands in need of education, and the ties of habit are equally necessary to it. It is with this sentiment as with every other feeling, and there is a secret connection between the deference we show to a superior and that which we ourselves expect from men placed below us in the social order. By the absolute destruction therefore of all rank, respect for the royal dignity, being supported by no personal interest, by no habit of opinion, would cease to have force, would no longer be felt, and would shortly appear foreign to our new manners. A monarch, a throne, a crown, would astonish us without exciting our veneration, were we led to the idea of such supremacy by no gradation, no intermediary steps. Nothing more sure, than that the whole scene would be changed, if ever that levelling scheme, unexampled in the history of mankind, which

has assumed the name of equality, should establish and perpetuate itself, and reverse the moral duties and principles of mankind.

There exists but one being in the universe whose supreme majesty we can constantly adore, without the intervention of any idea between his power and our weakness, between his greatness and our insignificance. But in the case of God, his very infinity and absolute omnipresence bring him, as it were, into contact with every particle of our mind and our soul, and thus furnish a sort of perpetual ladder by which we may ascend to himself: and such is the nature of our mysterious conversation with him, that the farther we advance and the more we perfect our knowledge, the higher and more inexpressible is our veneration.

If we wish, under another point of view, for a farther proof of the importance of gradations and the various applications of this truth, we shall find it in the religious philosophy of the Pagans. That philosophy, having
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despoiled the first author of nature of his spiritual essence, and having continually represented him under a corporeal form, it felt the necessity of captivating the respect of men by a hierarchy of deities, which, descending from the sovereign of the skies to the mysterious powers of the earth, aggrandized, in the eyes of mortals, the God whom a fabulous religion had dared to assimilate to their nature.

The reader will pardon these digressions; they are in my opinion not unimportant: it is the characteristic feature of great truths, to exist every where under a variety of shapes; and this august quality has always fascinated my attention in every moral or philosophical investigation to which my thoughts have been directed.

But to proceed. When I look forward to the effect that will be produced on the majesty of the throne, by the suppression of rank, I behold a whole people, weaning itself daily from all attachment to every kind of supe-

riority, and insensibly arriving at the disavowal
 of the only one that remains: I behold a
 whole people, born on the level waters of
 equality, approaching so near the monarch,
 that the last vestige, the throne, no longer
 strikes with awe; and who will shortly, per-
 haps, consider it as an irregularity in that ge-
 neral levelling plan of which they are become
 such admirers. I behold a nation, always ex-
 treme in its sentiments, exacting of the king
 of the French the forms and manners of a
 private individual, and demanding, as a proof
 of his patriotism or his love for the constitu-
 tion, that he should be abandon his exterior
 dignity and forget all ideas of grandeur. But
 let him beware how he falls in with this up-
 start taste whose existence can be only for a
 day. It would be sacrificing to the popularity
 of a moment, that empire over the imagina-
 tion which constitutes a part of his power
 and is one of the instruments of his autho-
 rity. What then, it will be said, was Louis
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the Ninth not respected when he dispensed justice at the foot of an oak? Was Henry the Fourth not respected, when, in an edict of the Hotel de Ville, he gave himself the title of first citizen of Paris, or when he partook of a rustic repast at the table of a peasant? Certainly they were both deserving of admiration; but we cannot help perceiving that it is the brilliant contrast of their omnipotence that gives to the simplicity of their conduct its principal lustre. In like manner do we admire Catinat for joining in the diversions of his soldiers, when we recollect that it was immediately after a victory. But when, by a change of constitution, a monarch has been divested of his brightest prerogatives, and the rights of the nation have been every way increased, the general interest requires that he should not risk, by any popular familiarity, the respect due to his rank and his person. How many ideas are connected with that respect, and how many realities depend on it!

Either we must renounce monarchy, or invest the monarch in all the splendid attributes which constitute his dignity ; but this last condition it is impossible to fulfil when every kind of rank has been annihilated. By way of recapitulation then, we may affirm : that there can be no liberty without public order, no public order without executive power, no executive power, in a great kingdom, without the support of royal majesty, and to this majesty an intermediary rank between the throne and the people is necessary. Thus the system of equality, when carried to an extreme, instead of being favourable to liberty, in a monarchical government, appears to be diametrically the reverse.

After the strong reason that results from these considerations, can it be necessary that one should descend to say, that the existence of two, three, or four hundred peers of the realm, in such a country as France, would be so limited a superiority as very little to inter-

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fere with the vanity of twenty-fix millions of men? Muſt we be obliged to negociate with the delicacy of ſo petty and ridiculous a ſentiment, when it has been already proved that the idea of a king cannot ſubſiſt alone; that we muſt either part with monarchy, or inſtitute a gradation of ſteps leading up to it; that theſe mere abſtractions, theſe fictions of dignity, as they may appear, conſtitute the very eſſence and ſoul of a monarchy; and that a great country, whoſe law and adminiſtration are one, cannot be governed but by a monarchy? Meanwhile, ſince it is eaſy enough to perceive, through all the flights and heroiſm of the reigning patriotiſm, that vanity in all its extravagance, vanity in all its madneſs, is the origin of all our miſfortunes, ſince vanity breaks out, if I may ſo expreſs myſelf, at every joint of the ſyſtem, let us repreſent to it with mildneſs, let us repreſent to it, if neceſſary, with humility, that that ſuperiority, which depends upon the ſtructure of the po-

litical fabric, is totally of a different nature from that insolence and despotism which flow from independent and self-supported rank: the latter, altogether violent in its nature, is compelled by a thousand artifices to maintain that respect which philosophy refuses; the former is bounded by a strong and visible line, and has no need to borrow the succour of illusion. This strong and visible line is marked out by national interest, and the country has part in all the homage that is paid to those dignities which exist only for its benefit. The peers of England might seem to be independent of the country: they are created by the king; but they well know that all which is substantial in their rank depends upon the constitution. They are not ever upon the stretch after imaginary greatness, but cultivate with tranquillity that greatness which is conferred upon them by the very nature of the government.

In these moral and beneficial distinctions of rank,

rank, every thing approves itself to a sound understanding and carries the evidence of its utility along with it : nor is it possible to confound them with those distinctions which draw out of the bank of general happiness, without paying back any thing in return.

Can it be possible, that, when we speak of luminous arguments like these, their value must be brought to the capricious criterion that vanity affords ?

I will add only one more observation of the same tendency. Nothing could be more reasonable than the condemnation that was passed upon that endless multitude of titles, heretofore in use in France. But this sentiment of indignation, which sprung up all of a sudden at the very sound of the words count and chevalier, was not contented with destroying these useless and absurd appellations ; it looked farther to the very essence of rank and dignity of birth. In this extreme its efforts must always be nugatory. Birth and liberal con-
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dition will break out in a thousand forms; and a certain native greatness of manners and elevation of thought, will serve it for an index no less sure than the registers of the palace. The assembly would have done something much more effectual, if, in imitation of the English, it had created a house of peers, it had raised a certain number of giant oaks, which, by their magnitude, would calmly have smothered these impertinent shrubs: this, I say, would have been much more effectual than the extirpation, which has been attempted by fire and sword, of that vegetation, which, like the hydra's heads, is perpetually renewed.

As I am speaking here of the interests of vanity, I will recal an observation I made in my last publication, that the institution of a house of peers would have given new splendor, in the eyes of Europe, to the name of French citizen. Moral esteem is subjected to the same laws as those we understand by *relief* in physical objects: where all is even and uniform
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there can be no sublime. Vanity herself then, would have been much more ingenious had she had recourse to this expedient, had she associated the numerous assembly of representatives to a class of men resplendent by personal dignity. In vain may we seek to supply this effect upon the imagination by the efforts of bombast, by addressing to one another the exhortation *to assume a becoming loftiness and an attitude of command*, and by employing various phraseologies, full of noise and fustian, and which prove much more clearly the wishes of vanity than her power. I remember having heard a witty fellow observe: For my part I hold the public in contempt, and this is one of my reasons, I am one of them myself.—A profound lesson may be inferred from this fally; it may teach, that we can never, without some political contrivance, institute a respect, either for the multitude or their deputies; that the monotony must be broken, that a relief must be given, if we would establish, in
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the midst of a populous nation, a system of reverential obedience which shall impress and keep its hold upon the imagination.

The contrivance of which I speak may be dispensed with in countries of little extent: not that even there we can have perfect equality, but the inequalities of wisdom and talents will suffice, where the state is small enough for these inequalities to be generally remarked; not to add, that, in small states the reasonableness of the measures of government is within the compass of every man's capacity to estimate. Neither of these advantages exists in great states, and of consequence the political system must, in such states, be quite a different thing. But when men have not yet received the lessons of experience, or when they obstinately disdain them, they foresee but in a very faint manner the disparities which result from unequal spaces and numbers; they take them for mere variations of one principle, whereas, in the social system, they frequently amount

amount to a total inversion of the principles in one case, which are strictly applicable in the other.

We may then affirm without hesitation, and after having examined the question in all its different relations, that the principle of equality cannot be adapted to a vast country, subjected to a single law and a single authority. Of necessity either this principle will destroy monarchy, or monarchy will superinduce gradations of rank. In instituting therefore this sort of government, absolutely indispensable to France, an intermediary body ought at the same time to have been established between the throne and the people, and that body wisely united, as in England, to the political constitution of the state.

But a farther idea presents itself, and I could wish to be informed how, consistently with the destruction of every species of rank between the monarch and the people, and with the annihilation or extreme reduction of all
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the prerogatives which are the effence of royal majesty, the throne can be made hereditary. This succession, which leaves to the accidents of nature the personal qualities of the prince, it is impossible should subsist without the perpetuity of those sentiments of respect inherent in his supreme rank ; and it is the uninterrupted transmission of these sentiments that constitutes, in a political state, the true hereditary succession. Hence it follows, that, to preserve the crown in the same family by right of primogeniture, all the conditions necessary to secure to the royal authority a respect independent of the personal worth of the monarch, must be observed.

There is no difficulty to men of reflection in comprehending the various truths I have enumerated : but no sooner did legislators, called upon to instruct their contemporaries, chuse rather to enlist under the standard of the passions, and to pursue the temporary applauses of the hour, than they perceived, that

that to establish perfect equality as a maxim of policy, morality and philosophy, would be an admirable means to secure them a numerous train of supporters ; for there is no man in a state of society who does not regard a superior as a very troublesome neighbour. No sooner therefore did they obtain permission to establish this petty sentiment into a principle of government, than the multitude drank in with avidity the lessons of these new instructors. It is not in the capacity of the multitude to analyze the complexity of truth ; they can do no more than associate themselves, by an effort of feeling, to the opinion of him who teaches them a palatable doctrine. Their leaders are well acquainted with this circumstance in their character ; they accordingly attempt no more than to infuse into them one or two ideas, and basely flattering their short-sighted arrogance, they tell them that the whole science of government is to be found in the developement of a single axiom. It is thus,
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that in the name of equality, they have induced them to believe the most free, the most happy government in the world, the government of England, to be tyrannical: that they have taught them to apprehend danger from a division of the legislative body into two houses, though an institution that had, a few years before, been adopted even by a republic, the United States of America: that they have inspired them with an irrational contempt for all intermediary rank, philosophically indispensable to the support of royal majesty. And by and by, in the same name of equality, they will order a partition of landed property, and at length effect, by their plan of uniformity, anarchy the most complete. But look at the universe, and see whether gradations and distances have been rejected by its wise architect: on the contrary, it is by them, it is by a general system of subordination, that every thing holds its place, and that the gene-

ral harmony of the world is maintained. Hear the words of a celebrated writer of antiquity :

“ The Supreme Being separated the elements to place them at peace. Fire, the lightest of all, was sent to shine in the regions of heaven ; the air had the second place, and next came the earth suspended by the laws of gravitation in the midst of the abyss ; water had only the fourth rank, yet was it to constitute the limits beyond which the world might no longer pass. Thus did the author of nature, by assigning their different situations to the elements, organize the universe*.”

* Hanc Deus & melior litem Natura diremit :
 Nam cœlo terras, & terris abscidit undas ;
 Et liquidum spisso secrevit ab aëre cœlum.
 Quæ postquam evolvit, cœcoque exemit acervo,
 Diffociata locis concordi pace ligavit.
 Ignea convexi vis & sine pondere cœli
 Emicuit, summâque locum sibi legit in arce.
 Proximus est aër illi levitate, locoque :
 Denfior his tellus, elementaque grandia traxi,
 Et pressa est gravitate sui. Circumfluit humior
 Ultima possedit, solidumque coercuit orbem.

OVID. METAMORPH. Lib. I.

Ah! how happy is it for the human race, that our political Quixottes are unable to dissolve this harmonious system, and subject the elements to an equality! Before the termination of the year they would renew the ancient chaos; and, to complete the catastrophe, the remembrance of their genius, we and they should perish together.

CHAPTER XIX.

The French Constitution has introduced the greatest Inequalities.

DISTINCTIONS which consist in mere appellatives of convention, are not to be ranked as distinctions inimical to social equality; vanity cannot be wounded in those beneath, nor insolence nourished in those above, except where these appellatives represent real advantages, and recal to the mind honorary rights and immunities consecrated by opinion.

Inequalities may therefore exist, susceptible of no precise designation, and which yet may be more burthenfome and oppressive than those decorations and titles which have excited so great jealousy. These the French constitu-

tion has multiplied, and I proceed to show in what manner.

The ancient lawgivers of nations, in order to balance the terrible effects of the power of numbers, a power always possessed by the people, placed a moral force in the hands of governments, whereby to restrain the effervescence of passions which ignorance and misfortune are apt to engender. We have subverted this prudent equipoise, have at once destroyed the authority of administration, weakened the empire of wisdom, and after consecrating, by an abstraction, the sovereignty of the people, have conferred on it every species of power. At sight of this new master every one has enquired by what means he was to be seduced, and what address was necessary to obtain the first rank in his court. To hold of him a municipal office, a seat on the bench of judgment, a church dignity, and to contest these places with an infinite crowd of competitors, was too petty a sphere of ambition.

bition. A universal passion was excited of directing the opinions of the despot, and of influencing his sentiments. Some have nourished his suspicions, others inspired him with jealousy and distrust, and all justified his violence. The daring partisans of sedition, eager above all others to exercise their sway, have held consultations at taverns; or have mixed with the groupes which assemble in public places; and there, according to their pleasure, according to the ruling passion of the day, have irritated the people against the king, against the queen, against foreign monarchs, against ministers, against magistrates, against every man holding rank in the social order, and lastly directed its fury against property and all those who possess it. At the same time another junto, ambitious of a more extensive empire, have composed pamphlets, suited to the taste and understandings of every class of society; and mixing, in their recital of events, maxims the most dangerous and principles

the most libertine, have disseminated through the kingdom a spirit of independence and irreligion. They have given the name of fanaticism to piety, of vexation to the laws of order, of tyranny to the most feeble authority, and the still more terrible one of aristocracy to every opinion contrary to their own doctrines and tenets: and among these men some, writing their productions with the dagger's point, have knowingly calumniated the most virtuous citizens, and denounced them, without scruple, to the vengeance of a blind populace.

Such are the new authorities which have started up in the state, such the different superiorities which the constitution has produced, such the actual inequalities which have supplied the place of the vain distinctions, the suppression of which has been celebrated with so much ostentation. By what names shall we call them? What titles shall we invent to express the supremacy of those who can, with impunity, stir up the people against the opinions

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nions and persons of public men ; who can, with impunity, draw insults upon the monarch and all who are connected with him ; who can, with impunity, cut down my woods, ravage my estate, set fire to my habitation ; who can, with impunity, recommend a traveller to popular outrages, or can themselves constrain a peaceable citizen, by menaces, to fly his paternal abode, and become an exile from his family ? What titles also shall we invent to express the supremacy of those, who have engrossed exclusively to themselves the public ear, who by their daily publications occupy the whole of the few precious moments that husbandmen and artisans can devote to the improvement of their minds ; who thus govern the people by lies, inspire them with whatever passions and sentiments their base purposes may require, and insensibly weaken in them every tie necessary to the maintenance of social subordination ? Ah ! let us call them dukes, archdukes, princes and

viceroys ; let us engage to treat them with the utmost deference, provided they will engage in return to leave our property and our lives secure, and to respect morality and religion, and we shall make a happy exchange, we shall sign, at the present moment, the best of all possible contracts. For, I repeat it, these are the masters which have been given us by a constitution that has placed the sceptre in the hands of the demagogues of the multitude ; this is the terrible aristocracy which that constitution has generated. And yet we talk of liberty, we boast of a system of equality, a system, that shall place all men upon a level ! It is true the superiorities which heretofore existed are no longer to be seen ; but those which have succeeded them are a thousand times more terrible. We have destroyed the parchments which conferred on the ancient chevaliers of France their honorary prerogatives ; but we have given commissions of audacity and impunity to men strangers to every generous

rous sentiment. We have taken out of the prospect the weathercocks upon the chateaux of the noblesse; but we have introduced on all sides the torches of incendiaries. We have destroyed the pigeon-houses of lords of manors; but we have new-peopled the plains with tyrants athirst for blood. We have broken to pieces the proud sepulchres that remained as a memorial over the ashes of the dead; but we have surrounded with tremendous silence, and secured with tyrannous precautions the abysses destined to immanacle the living.

Menace has been every where substituted for the mild law of respect, and sanguinary vengeance for the efficacious interposition of a venerable authority. Government has been sacrificed to the fear of despotism, and there has immediately sprung up a multitude of tyrants, who, celebrating hypocritically the charms and blessings of equality, have extended their yoke over the property, over the persons, over the opinions and over the consciences

of

of men. Meanwhile they are not descended, as one might be led to imagine, from the land which Cadmus sowed with the teeth of serpents ; but they owe their origin to those fatal germs of anarchy which have corrupted the vegetation of the moral soil of France, and rendered it prolific in malevolent demons and savage spirits.

CHAPTER XX.

Concluding Reflection on the Parallel of the two Constitutions of France and England.

THE national assembly of France, who were desirous, at whatever price, to obtain glory, and who now find themselves so disappointed, had a path open before them by which they might infallibly have arrived at this first object of their wishes: How splendid a part would have been assigned to them in the drama of nations, if, when occupied in framing a code of laws for a great people, they had concentrated their scattered ideas, and had ranged themselves, so to speak, round the most distinguished political constitution of Europe, with the noble design of taking it for their model, and copying such parts of it as were applicable to France and of which experience had evinced the utility ! The English,

lish, for it will be presumed that it is of their government I speak, would themselves have been eager to point out the corrections of which their political system stood in need; and every nation of the earth, attentive to the scrutiny which would have preceded the most august of adoptions, would have felt a consciousness that it was their interests that were discussed by anticipation, since a similar political liberty once established among two rival nations, and these the first nations in Europe, this double example of liberty without disorder, would have acquired such an authority, that, forcibly conveying with it the tide of opinions, it would have formed the destiny of the world.

Every one of us ought to have fallen prostrate at the feet of legislators who should have adopted this plan. Would a sage and prudent spirit of imitation have injured their renown? No; the whole earth would have rendered homage to the rectitude of their in-

tentions and the happy fruit of their cares. What ingenious novelties, what fallies of originality could have been put in comparison with this secure and tranquil success! Observe that it is always by the success of their labours that the wisdom of legislators is appreciated. Concerned as they are in fixing the destiny of such an immensity of interests, it is impossible in idea to separate them and the topics of their care, or to give them a renown apart from the calamity or happiness of nations.

Add to this, that it is not every sort of ambition, every species of glory, that can be appropriated to a collective body. Metaphysical honours can never become the common property of an assembly. Nobody supposes that the great number can ascend to the summit of this pyramidal space, where the vigorous wing labours in its flight; and for this reason, together with so many others, successful effort is the only reputation that can be shared among a multitude.

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The legislators of France then, ought to have attached themselves to plain and practical ideas: their business lay amidst the realities of human life. A thousand travellers had described the lengthened road, that leads from the first naked hint of truth down to these ideas, and we did not need the instructions of the national assembly upon that article. They would have better informed us, and served us more effectually, if, with the English constitution in their hand, they had asked themselves: What additions can we make to this constitution, to secure more firmly public order? What retrenchments can be made from its different authorities, to perfect the system of liberty? What new institutions shall we have to prepare, to strengthen the influence of morality on the people? These questions would have led to others; the executive power, instead of being totally forgotten, would have been scrutinized in all its parts, and it would have been discovered, whether, among the prerogatives

prerogatives conferred on the English monarch, there were any that the maintenance of public order and the activity of government might dispense with. It would perhaps have been seen that, from the magnitude of the standing army, the number of promotions in the power of the monarch ought to be limited. It would perhaps have been seen that, in a kingdom like France, collective administrations were attended with considerable advantage, but that it was indispensable to subject them to the executive power by all the ties which constitute true dependence. It would perhaps have been seen, that these administrations were capable of enlightening, by regular communication, and even of restraining, within certain limits, the discretion entrusted to the choice of the sovereign. It would perhaps have been seen that a middle term, between the short life of our legislatures and the long duration of English parliaments, was advisable. It would perhaps have been seen,

seen, that the number of peers of the realm ought to be limited, and their nomination subjected to certain restrictions. The unequal distribution of the rights of representation might have been prevented by the judicious plan which has been devised by the assembly. In like manner turbulent elections, of which England furnishes such frequent and scandalous examples, might have been remedied, by the same means that are employed at present, or others of greater efficacy. In fine, without trampling upon those important principles, or neglecting those powerful springs, which constitute together the nice connection between order and liberty, between the firmness of authority and the moderation of prerogative, it would have been easy to introduce the various amendments upon the English constitution which truth and experience might have recommended. How superb a monument might we have raised, if we had not wished that every thing should be new or
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should wear the appearance of novelty ! if we had not wished every stone in the edifice to bear some characteristic mark of our imagination and be dated with the era of our genius ! Alas, how great injury has our vanity done us ! There existed a government, in which tranquillity, confidence, public order, and the regular movement of administration were found united to the most perfect civil and political freedom ; and we have instituted a government in which disorder is every where prevalent ; in which all the world commands and no one obeys ; in which liberty is but a devise, morality a maxim, and happiness a vain boast. But before I fix my attention more particularly upon the melancholy effects of our faults and our errors, before I take a last view of the state of France, I would consider in a new light the important subject I have undertaken to investigate.